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COMMITTEE ON AGRICULTURE
January 24, 2006
LB 934, 1018, 964, 916

The Committee on Agriculture met at 1:30 p.m. on Tuesday, January 24, 2006, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB 934, LB 1018, LB 964, and LB 916. Senators present: Bob Kremer, Chairperson; Philip Erdman, Vice Chairperson; Carroll Burling; Ernie Chambers; Doug Cunningham; Deb Fischer; Don Preister; and Roger Wehrbein. Senators absent: None.

SENATOR KREMER: Well, if we can have your attention, we will begin the hearings for today and we thank you all for coming. We'll just go through a little of the procedures here, what to expect. If you have a cell phone, please turn it off so it's not disruptive; and ask not that there be any display of support or opposition to any of the bills; that we're here to hear your testimony. When you come up to testify, please fill out the sign-in sheet. There are some on each corner. Did I hear...I thought my cell phone may be going off. I better shut it off here, so. There are sign-in sheets on each corner of the door as you come in. There are also some up here, and please have them filled out beforehand. If you don't, why, you can always fill it out and bring it back up. And if you wish to testify, we'd ask you to move to the front so we can kind of keep the procedures moving quickly. If someone has testified before you and had the same comments that you would like to make, it's...we don't care at all if you say I agree with the person in front of you and not have to go through the same comments again. So we'd like to...we have four bills today so like to keep things moving as quickly as possible, so try to keep your testimony concise. I will introduce the members of the committee. On my far left is Deb Fischer from Valentine, I put her in the wrong city last time and I apologized. Senator Wehrbein is not here and I might say that several of the senators, I know Senator Erdman has bills to introduce in another committee so they will be coming and going and we will try to introduce them as they come in. Senator Carroll Burling from Kenesaw is next; Senator Doug Cunningham from Wausa; I'm Bob Kremer, I represent the 34th District, Aurora; Rick Leonard is, he'll be back, is our research analyst, oh, here he is. Hi, Rick. And Don Preister from, it doesn't say Omaha in here. What is that...oh it does say Omaha, oh Chambers Omaha, it says

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Bellevue. Is that the correct address?

SENATOR PREISTER: Both.

SENATOR KREMER: We usually say Omaha but then so. And Nikki Trexel is our committee clerk. When you come up to testify, please state your name and spell your name. It's not for our benefit but it's for the transcribers that have to listen to the transcription and make sure that they get your name correctly. We will hear the bills, I think...I don't know what...how it was posted but a little different order than what maybe what was first announced. LB 934 concerning the fence viewing. Then we have two bills, Senator Hudkins, Senator Preister, LB 1018 and LB 964 deal with the Grape Board, and then the last one is LB 916. The first bill, LB 934, was a bill that we made a committee bill and Rick Leonard is the research analyst for the committee and he will introduce the bill at this time. Oh, I'm sorry. I need to introduce our page, Kallie Schneider, sophomore at UNL, and if you have any handouts that you'd like to hand out just get her attention and she hands them out. If you need a glass of water or anything like that, why she's here to help us and so we've got to use her. Okay, Rick.

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RICK LEONARD: (Exhibits 1 and 2) Thank you, Senator Kremer. As you mentioned, my name is Rick Leonard. I'm the research analyst for the committee. Last name is pronounced, L-e-o...spelled L-e-o-n-a-r-d, here to introduce LB 934. As Senator Kremer mentioned, the bill was introduced as an Agriculture Committee bill and a couple of additional senators have signed on to the bill. LB 934 proposes a number of significant changes to Nebraska's law of division fences. The bill arises from interim study resolution LR 207 introduced jointly last session by Chairman Kremer and Senator Vickie McDonald. This committee already has pending before it two pieces of legislation relating to the Nebraska fence law introduced last session, LB 286 and LB 706. Both of these bills were motivated by the need to address elements of the existing law that have proven burdensome to counties, and other vague and contradictory features of the law, largely brought about by revisions to the fence law made by LB 882 in 1994. The committee took no

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action on these bills in favor of more extensive review of issues surrounding the fence law and the purposes it serves. While LB 934 speaks to the narrowly focused issues that were the subject of the bills that are already pending before the committee, it is more...this bill could be more accurately characterized as comprehensive modernization of the entirety of the law. This modernization is motivated in part by increasing judicial scrutiny of fence laws first enacted during early settlement to apply in an open range setting. It is the purpose of LB 934 to update the law to more appropriately reflect evolving rural land uses and ownership patterns and those public interests in division fences that arise in the modern context. Let me walk through the...talk about the specific provisions of the bill. LB 934 would make the following specific revisions. The primary changes are found in Sections 4 and 7 and in the sections outright repealed under Section 12 of the bill. The elements of the bill include the following. Section 34-102 is amended by Section 4 to redefine circumstances when adjoining landowners are assigned shared responsibility for fence construction and maintenance and the proportional contribution each is liable for. Current Section 34-102 assigns a duty to each landowner to make and maintain a just proportion of the fence between them unless neither owner...landowner desires a fence. LB 934 will make these changes. Clarify that within areas zoned primarily for agricultural or horticultural use, the duties assigned adjoining landowners under this section applies when either or both properties are used for agricultural use. An area zoned primarily for agricultural or horticultural use is defined by reference to similar terminology under the greenbelt statutes, namely Section 77-1343. In all other areas of the state, the law would apply only when both adjoining properties are utilized for agricultural use. The bill does retain a provision of existing law that adjoining landowners have responsibility to contribute a just proportion but specifies an equal share allocation only when both landowners utilize the fence for livestock enclosure. Retains the current law specification that this section does not compel construction of a division fence if neither landowner desires one. Section 34-112 pertains to the liability for repair of a damaged fence as amended by Section 5 to conform to the changes in Section 34-102. A conforming citation to the law of division fences contained in the Game and Parks statute Section 37-1012 and that

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section deals with Game and Parks liability...responsibility for fencing on portions of the rail to trail corridors. Causes of action to allow landowners to recover one-half of the construction cost of a new fence and to recover cost of repair of a damaged fence that are the responsibility of an adjacent landowner that are currently contained in outright repealed Sections 34-103 and 34-113 are consolidated and replaced in a new Section 7. Section 7 provides as follows. A landowner gives rise to a cause of action to compel an adjacent landowner to fulfill his or her statutory duties for contribution by first serving upon the adjacent landowner written notice of intent to construct, maintain, or repair a division fence. Notice is to contain a request that the adjoining landowner fulfill statutory fencing duties through actual physical construction, performance, or financial contribution. Clarifies that after giving notice, the landowner may initiate or complete construction or repairs in which case the cause of action would be for equitable contribution only. If the adjacent landowner is unresponsive to the written notice, the landowner may commence an action within one year of giving the written notice in the county court of the county where the fence is located. The action may be commenced by filing a form for such purpose prescribed by the State Court Administrator. Notice and summons of such action are to be given according to procedures modeled upon those specified for action initiated in a small claims court. Upon receipt of the claim, the court is first directed...is directed first to refer parties to mediation unless either party may object and either party may object to mediation. Harmonizing changes to the Farm Mediation Act are made by Sections 1 and 2 of the bill to accommodate acceptance of referred fence disputes. If mediation succeeds in a mutually signed agreement, the court enters the agreement as the judgment. If mediation fails or either landowner refuses mediation, then the case proceeds according to normal civil procedure. A limited right of entry upon adjacent land necessary for fulfilling fencing responsibilities is provided in Section 6 of the bill. Such right of entry is implicit under current law but not defined. Section 6 defines access as confined to that reasonably necessary to carry out activities contemplated under the law. The section further specifically excludes authorization for tree removal or other alteration upon other property or removal of personal property without consent of the landowner or under court

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order. Specifies that existing law and procedures can continue to apply only to division fence disputes that arise before the effective date of the bill. And I wanted to particularly call your attention to this particular section. I'll have a letter from the Department of Roads that speaks to this issue. Expressly provides a new Section 8 that the state of Nebraska shall have the same responsibilities as a private landowner with respect to division fences unless otherwise specified in law. But that any claim the state respect...with respect to the division fences shall be pursued through the Miscellaneous Claims Act. Current law contained in outright repealed Section 34-111 provides that claims against the state for fence contribution may be made pursuant to cited section but does not expressly assign fencing liability. And finally the bill outright repeals Section 34-104 through 34-111 which currently provide for the appointment of fence viewer panels to hear and determine fence disputes. Current law assigns duties to county clerks to maintain and appoint fence viewers and to collect costs of construction or repair of division fences ordered by fence viewers through special assessment. And finally, the bill does carry the emergency clause. First objective of this bill is to address some potential constitutional questions that surround Nebraska's fence law and all other fence laws. I've handed out two items for you that might be useful reference materials. I'm not expecting you to read them all at this point but a lot of our research and discussion of these things can be summed up in these two documents. One is a document from the National Agricultural Law Center entitled "The Constitutionality of Partition Fence Statutes in the Midwest." Another one is more of a summary of issues that I put together myself. First objective is to address potential constitutional issues with Nebraska's Fence Law. A landowner that does not maintain livestock or otherwise does not perceive any commercial or practical value in a division fence and objects to being compelled to contribute could primarily raise three issues. First, that the law violates equal protection since it benefits one class of landowner and penalizes another without any apparent governmental or societal purpose. Second, the objecting landowner is denied due process and serves no rational government interest justifying the use of the state's police power. Finally, a landowner may claim that a taking has occurred since the costs have been imposed on him without compensation, without a legitimate

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governmental purpose. These arguments are all enhanced by the fact that Nebraska and most other states have reversed...reverted from an open range...from open range fence-out laws to fence-in laws by placing liability for damages due to wandering livestock and a duty to restrain upon livestock owners. The second part of this attachment is again it may...you may be able to refer to it in your leisure. I put together somewhat of a history of the evolution of Nebraska's fence and herd laws. That may be of interest to you when you have more leisure time to study that. State laws governing partition fences were typically first enacted at early settlement and have not changed appreciably since that time. Western state fence laws arose in an open range area when many states adopted fence-out laws, meaning the livestock owners were not liable for damage by trespassing livestock, and neighboring landowners had the burden of building fences to keep livestock off their property. Since that time, herd laws, as I mentioned, have largely reverted to fence-in. Laws recognize a duty of livestock owners to enclose livestock and liability lying with the livestock owner for trespassing animals. However, states have also enacted partition fence statutes that continue to compel joint responsibility for building and maintaining fences by adjoining landowners even though in many situations a landowner may not have a perceivable benefit. These laws which made...designed...for a...for an open range area are increasingly questioned as being unnecessary and unfair in light of evolving rural land uses and ownership patterns. The addition...this contains a very excellent summary of case law around the nation that has been brought by challenging the constitutionality of state fence laws. In some cases, they've been upheld and others not. Case law around the nation has been mixed. In some cases, courts have struck down compelled contribution statutes on the grounds above because the courts have said there's no...little to no legitimate government interest remaining particularly when the complaining landowner is not a livestock owner. However, there is considerable case law that have upheld compelled contribution statutes, including case in Iowa which...including a case against Iowa law which is very similar to Nebraska, contains a feature that allows for enforcement of the contribution obligation through special assessment. They've upheld that finding one or more of the following legitimate public interests to justify the use of the police power to compel contribution. One,

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decreased disputes and litigation arising from trespassing livestock; enhanced landowner privacy and lessening of trespass and adverse possession conflicts that would arise more frequently without clearly marked rural boundaries; some enhancement of public safety; physical separation of conflicting land uses; and interesting mitigation of the impact of conflicting land use intrusion into traditionally agricultural areas. The bill drafted would address constitutional issues in the following ways. By providing shared responsibility arises only when both adjoining properties are used for agricultural purposes except where both parties lie in an agricultural zoning. That both parties or at least one of the parties are agriculture properties appears from review of relevant case law to be a factor in courts finding sufficient public interest exists to allow a compelled contribution. The bill retains language that compels only a just proportion contribution, similar language that's in Nebraska law today. Similar language interpreted in an Illinois case suggests that allocation responsibility can be adjusted to something other than 50-50 so that the allocation is appropriate to the circumstances. A flexible just proportion allocation is less likely to impose an unjustified burden on a landowner and lead to a finding that the law is invalid as applied. That the just proportion is intended to be flexible to have a meaning other than 50-50 if appropriate is reinforced by adding clarification that the equal share contribution, 50-50, still applies when both parties place livestock against the fence. The bill provides for initial referral of...the opportunity for referral of this dispute to mediation would tend to result in resolution short of litigation and addressing potential constitutional issue. And finally, the bill privatizes fencing disputes providing for direct civil enforcement. We're removing a number of exercises of the police power under this bill to compel contribution. Basically, the direct intervention of governments is now minimal under the bill, merely providing a forum through the courts for private parties to resolve the dispute themselves. The bill addresses some procedural vagueness, some contradictory methods of remedy that exist under the bill. The bill...we think that one of its advantages is discouragement of confrontational resolution. One of the flaws with the existing procedure is that its informality and relatively small expense may actually encourage invoking fence dispute procedures rather than

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encourage private resolution short of governmental intervention. Section 8 of the bill expressly provides that the state of Nebraska shall have the same responsibilities as a private landowner with respect to division fences unless otherwise specified. Existing Section 34-111 again which is one...among the repeal...outright repealed sections appears to contemplate that the state may be a party to a view...fence view and provides that claims against the state awarded by fence viewers may be pursued under Section 81-1170.01. However, review of relevant case law suggests it is uncertain that this section serves as sufficient express waiver of sovereign immunity for the same liability for division fences that apply to private landowners. We have received a communication, and I'll hand that out when I conclude the testimony, from the Department of Roads who arrived at the same conclusion that the bill would impose a liability they don't...they currently don't have. The bill addresses cases that are in progress prior to the change in the law that those that are initiated before the effective date of the bill will continue to be resolved in the manner currently provided under law. The bill contains the emergency clause precisely for the purpose of minimizing the number of cases that might arise before the law becomes effective. And finally, I mention that the bill again adding additional public interest to our fence law in the modern sense. We think it provides some incidental reinforcement...zoning reinforcement in that the bill specifies that in areas zoned primarily for agricultural or horticultural use, the duty of contribution exists if either of the properties are utilized for agricultural use. Thus residential and other intrusive land uses into agriculturally zoned areas face the prospect of fencing contribution as they do today. In all others...all other areas, the duty of contribution exists only between adjacent agricultural land. That's why we believe the draft would have a modest incidental benefit of reinforcing land use planning that attempts to preserve and enhance areas for agricultural use and discourage residential development and other conflicting land use intrusions into farming areas. I apologize for the length but there was a lot of research and things that I needed to get into the record. Before I end, Senator, I again...the page...I do have two letters. (Exhibit 3) One is a letter from Senator Vickie McDonald in support of the bill. (Exhibit 4) And the other is the letter from the Department of Roads that I mentioned. The

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committee clerk has the originals and I'd ask her to enter those in the record at this time.

SENATOR KREMER: Okay. Any questions of Rick? Senator Burling.

SENATOR BURLING: Rick, does it have...does the dispute have to go to court before it could go to a mediator?

RICK LEONARD: No. You can take a court (sic) to mediator on your own. You don't have to involve the courts. What this bill sets up is the procedures that if you do initiate the claim, much as we have some procedures for the court providing opportunity for mediation, for instance, the parenting act. That the court provides an opportunity for the parties to kind of put the case on hold for awhile, meet with a mediator, and then come back. And particularly in some situations we feel that that provides a better opportunity for resolution informally outside of going through the full litigation process.

SENATOR BURLING: So with this bill as proposed and there is a dispute, then what's the process for the parties to go to a mediator?

RICK LEONARD: What the bill does...the bill basically proceeds in this way. That a landowner who...the law still does compel participation in a division fence as it does today, when one landowner desires it. What the bill would say is that that landowner first notifies this landowner...the adjacent landowner to say I would like to work on this fence that needs repaired or I'd like to construct a fence. The landowner...if that other landowner is unresponsive to that, the bill provides that that landowner has up to a year to initiate a claim in the county court. The year is provided...it specifies the landowner could go ahead and complete the fence himself which in that case the cause of action is...as he sends the letter he can ask for either what I call...what's performance or contribution. Either would you please build this half of the fence, or would you come out and help me, or would you please, let's go to the store and buy the materials, or contribution. Part of the reason we specify the contribution is the very fact of land ownership patterns today. The law was written in a time when everybody knew

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how to build fences. And we anticipate there are more and more instances where a person might have a liability, doesn't have expertise in building fence, and would rather just say let me contribute rather than ask me to go out and build this. The law...then once they...the claim was initiated in the county court. What this bill does is specify that the court would then ask the parties to first attempt mediation unless either party were to object to that. And parties need to retain the opportunity to object to that, in part to avoid some procedural issues that could come into play, and in part because of to be in line with our constitutional provisions of access to the courts. If either party...if the parties did do that...went to that, the law says that we'll give you 90 days to work it out. If you work out something, report it to us and that'll be the resolution of this case. If you don't work it out or if you don't want to go to mediation, we just simply proceed to a case. Part of the reason we put the mediation in there is in part to replicate the function of the fence viewers today in that the fence viewers are a fact-finding tribunal who essentially, by imposed arbitration, impose the relative responsibilities. We...the mediation would tend to result in the same result, but under a more mutually agreed thing rather than an imposed arbitration.

SENATOR BURLING: Thanks, Rick.

SENATOR KREMER: Senator Wehrbein.

SENATOR WEHRBEIN: I want to give you a scenario which I think is typical, at least in my country now where people don't want fences. Say I want to fence on a half mile so a quarter mile is mine and a quarter mile is my neighbor. He is adamant. He not only doesn't want a fence, he's not going to pay a nickel to do it and I can take him as far as I want. So I go to court, go through the mediation, go through this process, what is the basis of the court...what will the decision of the court be based on?

RICK LEONARD: The reason we've...there are two allocation things specified in the bill. One is a just proportion. That is currently the current law. That has been in similar provisions, been interpreted in Illinois and is in the Illinois laws and been interpreted in a case before it there that just proportion may mean an allocation rather...less

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than 50-50, and it's important. The case I'm talking about was a case where there was a very large livestock operation, and was adjacent to a land actually owned by a widow in a nursing home. And how they got this all the way to the Supreme Court, she actually died in the course of this litigation so they pursued against her estate. The court said, you know, in light of the original purposes of why we had this fence law no longer exists today. So therefore, I'm going to look at the more just allocation is what value each derived from the fence and the court arrived at an allocation of responsibility that was less than 50-50 in that case. The only point of where we specify 50-50 is when both landowners have livestock, use the fence to contain livestock. So when we take this bill probably in a lot of the livestock raising areas, the Sandhills and the ranching areas of the state probably has little to no effect. And it shouldn't because that's the area where the original parts of the law are probably still...

SENATOR WEHRBEIN: Where both sides want it.

RICK LEONARD: Right.

SENATOR WEHRBEIN: Yeah.

RICK LEONARD: They both want it. It makes sense in those areas.

SENATOR WEHRBEIN: In my area, that's long gone.

RICK LEONARD: Right. You're probably in a...you're in an area where the problems with the law are coming here in Nebraska and elsewhere. I see we have one of our...an attorney here. Nebraska's law was argued...has never been addressed on this constitutionality issue. There was a case, however, that did reach the Supreme Court in 2000, Prucha v. Kahlandt. That did raise these very constitutional issues that are raised...that are discussed in this article. The bill...the case was before the Supreme Court for a procedural issue and the court did make a ruling that they could go back to district court and argue. As I understand the case, though, was settled out of court before it was settled. We actually happen to have the attorney who represented one of the parties in that case and did a lot of research on the constitutional questions that I've been

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discussing here.

SENATOR WEHRBEIN: Thank you for now. (Laugh)

SENATOR KREMER: Any other questions? I probably didn't introduce Senator Wehrbein. I think he came in a little later from Plattsmouth, and Senator Erdman is the cochair from Bayard and I think he has to leave again to introduce a bill pretty soon. So, the just proportion, who decides that? Do you...if I was to want the neighbor to help build a fence I would decide what I think should be just proportion and if he doesn't agree then it goes on or who decides that, the just proportion?

RICK LEONARD: Again that's a judicial determination to make...

SENATOR KREMER: But if I can't make that agreement with the neighbor to satisfy both through just negotiation that's when somebody else decides for me. Is that right?

RICK LEONARD: Right. As I understand that, I'm glad you brought that up. I wanted to make the point that the fence law...landowners in Nebraska are free to arrive at whatever resolution and sharing and allocation of responsibility for a fence that they want. The fence law is not necessarily the preferred one. It's basically the default in the rare event...

SENATOR KREMER: Okay.

RICK LEONARD: ...when the landowners can't agree.

SENATOR KREMER: So you...

RICK LEONARD: So certainly landowners are free to agree...

SENATOR KREMER: So you try to agree and it could go to mediation so somebody else try to help you agree...

RICK LEONARD: Yeah.

SENATOR KREMER: ...and if you can't do that then goes to the courts and somebody else decides.

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RICK LEONARD: Right.

SENATOR KREMER: Okay.

RICK LEONARD: Right.

SENATOR KREMER: Any other questions of Rick? Seeing none, thank you, Rick. So we're ready to take the first in support of the bill. Just...yeah, that's it.

SHERRY SCHWEITZER: (Exhibit 5) Good afternoon. My name is Sherry Schweitzer, that is S-c-h-w-e-i-t-z-e-r. I am the Seward County Clerk and also the cochairman for the county clerk's legislative committee. County clerks have many jobs and most jobs are clerical in nature, for instance, issuing car titles, administering elections, board secretary, and et cetera. Fence viewing isn't, and it really has not been a good fit in our office. We've tried our best but have finally come to the reality that this...there's got to be another way to handle this most unusual event. I was here at the hearing last year for LB 706 informing you all about fence viewing. To jog your memory just a little bit on the subject, I'll give you a quick lesson on how it is processed right now. One landowner is upset at the neighboring landowner because he won't keep his share of the fence in good condition. They give the county clerk a notice in writing that we are to commence a fence viewing. We have to pick three people to be on a fence viewing board. These three must own agricultural land, or livestock, or both. We must notify both landowners of a time in which this fence viewing board will go and view the fence. Both landowners are given a time when they can have their say. The board must inspect the fence, and make an order, and decide if one or both of the landowners are at fault, and what repairs are necessary, and who is to pay. The board must make sure the fence is fixed, and if not, they can hire it done and the cost be assessed to one or both of the landowners' taxes. What the statutes don't say is that the neighbors are usually not good friends anymore. It doesn't say that fence viewing board is actually acting as a mediating board. It didn't say we should send the sheriff out to keep peace, but many county clerks have done it anyway. Although county clerks have done their best for this subject, it is just way beyond our scope. LB 934 is a bill that will serve the subject right. It will make the neighbors try to resolve

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the problem and will do so under those who can mediate the process correctly instead of the county clerk and a few local farmers down the road. The Nebraska Farm Mediation Act already in existence is the perfect place for fence viewing disputes. Expanding its horizons to include these fence disputes is another way to utilize a service already organized to help the rural residents albeit in a new way. I'll take...

SENATOR KREMER: Thank you, Sherry. Anyone have questions? Have you personally had to go out and be a fence viewer and negotiate a dispute?

SHERRY SCHWEITZER: Yes. I have facilitated two fence viewings in the last 5 years. I've climbed hills with the fence viewers to look at fences. I've had problems with a fence not being repaired where I have had to assess the amount that it cost to repair the fence against the taxes. I've had bad letters wrote to me because of the fence viewing dispute and their decision, and it's not in a good position to be in.

SENATOR KREMER: Do you take a hammer and staple along and help sometimes when you're there?

SHERRY SCHWEITZER: Actually, the fence is not repaired right at that time, but I do take tape measure to mark off the halfway mark, and a can of paint so we can spray the post, and make sure that everyone knows which half is which. I can remember my first time. Even though I grew up on a farm, I didn't know who was suppose to take care of which half, and so I had to actually go to my father and say...

SENATOR KREMER: And do a little studying?

SHERRY SCHWEITZER: Yeah, I did.

SENATOR KREMER: Any questions? Senator Wehrbein.

SENATOR WEHRBEIN: I don't want to prolong it but just...you're probably the one where you've been out actually doing it.

SHERRY SCHWEITZER: Uh-huh.

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SENATOR WEHRBEIN: There must be resistance to an electric fence in this case. People want...are they insistent upon...I mean most people today just build an electric fence and that...

SHERRY SCHWEITZER: Uh-huh. We've had...

SENATOR WEHRBEIN: ...instead of arguing.

SHERRY SCHWEITZER: Right. It depends what kind of livestock is on each side of the fence. One of my fence disputes involved race horses on one side and so the other side was just some grazing cattle. And so they needed barbed wire fence. They insisted upon and of course the one with race horses did not want that.

SENATOR WEHRBEIN: Okay, all right.

SHERRY SCHWEITZER: So, you know in my situation, the barbed wire fence was instruct...constructed and then the landowner with the race horses did construct his own electric wire fence inside...

SENATOR WEHRBEIN: On his side?

SHERRY SCHWEITZER: ...of his land. Right.

SENATOR WEHRBEIN: Thank you.

SENATOR KREMER: Any other questions? Thank you, Sherry.

SHERRY SCHWEITZER: (Exhibit 6) I also have some testimony here from the Jefferson County Clerk.

SENATOR KREMER: Okay.

SHERRY SCHWEITZER: I would just like you to pass that around and consider that.

SENATOR KREMER: Okay, we will enter it into the record then. Thank you.

SHERRY SCHWEITZER: Thank you so much.

SENATOR KREMER: Next testifier in support?

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MICHAEL KELSEY: Good afternoon, Senator Kremer and members of the Agricultural Committee. My name is Michael Kelsey, that is M-i-c-h-a-e-l K-e-l-s-e-y. I serve as executive vice president for the Nebraska Cattlemen and am here to provide testimony in support of LB 934. I should mention up front that the chairman of our natural resources committee, Craig Utter, who himself is a Sandhills rancher was unable to be here and has actually done a lot more fencing than I have, Mr. Chairman, here lately at least.

SENATOR KREMER: We could help that out, if you want to come out sometime.

MICHAEL KELSEY: I would be happy to try to do that if I could, so...but he does have a keen interest in this and I've spoken with him on several occasions about this particular bill. The basic purpose of LB 934 is to update Nebraska law. As you've heard in the bill's introduction and as stated in the statement of intent, Nebraska, and other western, and Midwestern states fence laws were typically first enacted at very early settlement to be applicable in an open range context and have not changed appreciably since that time. LB 934 is intended to adapt to the law of division fences to be more in line with fence-in rules that prevail today under Nebraska's herd laws and to those public interests in division fences that arise in the modern context. There's several components of the bill that the Nebraska Cattlemen have a keen interest in and appreciation for. Namely, providing for encouragement of private negotiation. LB 934 also provides for the utilization of informal dispute resolution through mediation in hopes of resolving division fence liabilities issues before the parties resort to litigation. As NC understands the bill...still, however, allows that should private negotiation not be successful, landowners can seek resolution of fence disputes through litigation. This maybe especially important in times when nonagricultural use land is adjacent to agricultural use land and there is a dispute between landowners over the value of a good fence. In closing, the Nebraska Cattlemen legislative committee will be meeting tomorrow to further discuss this bill and its implications. We would urge the committee to forward the bill to General File. And I'd be happy to try and answer some questions.

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SENATOR KREMER: Thank you, Michael. Any questions? Seeing none, thank you for your testimony.

MICHAEL KELSEY: Thank you.

SENATOR KREMER: Next who would like to testify in support?

JON EDWARDS: Good afternoon, Chairman Kremer, members of the committee. My name is Jon Edwards, J-o-n E-d-w-a-r-d-s, and I am here as a representative of the Nebraska Association of County Officials in support of Legislative Bill 934 and I believe based on the previous testimony you can see the practical need for this bill. So I won't take any unnecessary time of the committee other than to just reiterate our support for the bill and to thank Chairman Kremer and the committee for including the county officials in discussion leading up to this legislation. And with that, I would just ask that the committee support the bill.

SENATOR KREMER: Thank you. Any questions of Jon? Jon do you know of any...has there been a number of county clerks that have had to do the fence viewing that has been kind of a problem?

JON EDWARDS: It's my understanding that there have been a few that...typically, you know, it's the kind of an issue as the chair was stating before that can be very divisive. So you only need a couple of instances where you have clerks in positions that they really probably shouldn't be in, you know, in this time and maybe it's something that could be better done between the two parties or in the judicial system. So, you know, it has become an issue at times for clerks...

SENATOR KREMER: Okay.

JON EDWARDS: ...around the state.

SENATOR KREMER: Thank you, Jon.

JON EDWARDS: Okay.

SENATOR KREMER: Anyone else wish to testify in support?

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JEFFREY BUSH: Hello. My name is Jeffrey H. Bush, B-u-s-h. I'm that attorney that Rick Leonard was referring to. I argued the case before the Supreme Court involving the fence viewing laws. And I am here to support this new bill because I think the old fence laws are just unworkable as they exist. And I just want to make three brief points. Number one, I would agree with the analysis of Mr. Leonard regarding the unconstitutionality of the bill. And in the case that I was involved in which was Prucha v. Kahlandt, the one landowner didn't have any livestock and other landowner was a cattleman who had a real interest in getting a fence erected between these two adjoining properties. And Mr. Prucha had a forest, basically, in the hills in Burt County where I practiced law and Mr. Kahlandt had pastures in the hills with his cattle on it. Mr. Kahlandt had no...had let the fence dilapidate. It was a dilapidated fence and he needed it replaced to keep his cattle from wandering over on Mr. Prucha's land and out on the highway. And so he summoned the fence viewers in that case, and their decision was that not only did Mr. Prucha with the forest have to contribute half of the cost of the fence but he also had to lose a bunch of his trees. And this was a long fence line, it was about half a mile long. And they ordered that those be bulldozed which actually did occur. And so, it was a very bad thing for Mr. Prucha and I argued in that case that the fence law as applied to him are unconstitutional. And I really believe that in that situation where one landowner has no livestock and the other landowner has livestock and wants the fence, the existing fence laws are probably unconstitutional and that would be a problem. But that case was never resolved by the Supreme Court. The other aspect of that is the current fence law creates a special assessment which is strange...a strange part of the '94 law because the special assessment is an exercises of the police power. And if you...I believe the case law is if you don't receive a benefit proportionate to the cost of the special assessment then it is a taking contrary to the state constitution and the federal constitution. Also, I wanted to make the point that special assessment as it exists is basically unworkable because I've had clients who also want the fence erected and get the special assessment because they're dealing with absentee landowners or what have you. And once you get the special assessment giving you the right to collect the money you have to get the county treasurer to collect it. And usually as you've heard, the county

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officials not eager to get into these disputes. So then you have to get the county officials to do what they're supposed to do and they really don't want to do it anyway. So it's very difficult the current situation. Very difficult and you really need to do something to fix this thing. The thing is the special assessment is basically, in my opinion, the only person who can really directly enforce a special assessment is the local authorities such as municipality or a county. And there's nothing in the statutes that I've seen in analyzing that that shows how an individual can sue to collect the special assessment or foreclose the special assessment. So this new bill giving the judicial remedy is really excellent because you get past all that and you go directly to justice and that's what this bill does. I really like what Mr. Leonard has done and I really support the bill.

SENATOR KREMER: Thank you, Jeffrey. Any questions?
Senator Wehrbein.

SENATOR WEHRBEIN: Under this new bill, this timber is a wonderful example. Really the only answer is going to be for the one...the landowner who wants the fence to put it up and do (sic) his own money. I mean an electric fence in this case is impractical through timber. I mean at least timber that I have in mind. It really wouldn't last very long. So you'd about have to go to a good fence, and you're going to have to doze some trees which I guess would be on your side. And under this process, the answer is the landowner is going to have to pay entirely for his own fence. Especially if we follow the unconstitutional route of forcing a guy...I mean I have a lot of fence in our country that goes through timber, so...

JEFFREY BUSH: Right. That's what Mr. Kahlandt did. He sort of snuck the fence in, in the middle of the summer and Mr. Prucha just found out about it by driving by his property which was rather large. And one day he just found out that Mr. Kahlandt had bulldozed a large amount of trees. (Laugh) So Mr. Kahlandt had to do it on his own and then had to collect it somehow. But...

SENATOR WEHRBEIN: That's what he decided to do, right or wrong, in essence?

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JEFFREY BUSH: Right. It was essentially...

SENATOR WEHRBEIN: But what we're really going into a new era. That's my term, maybe it isn't true. But if you want a fence on your property, you pay for it yourself in many cases.

JEFFREY BUSH: Yeah and then you have to collect the contribution...

SENATOR WEHRBEIN: For...if that's due. It might...a court might rule that there's no benefit to the adjacent landowner so he wouldn't have to pay any.

JEFFREY BUSH: Correct.

SENATOR WEHRBEIN: I mean that would be up to the court. I understand that.

JEFFREY BUSH: Right. But under the new bill, you have direct means of doing that under the old bill.

SENATOR WEHRBEIN: Yeah.

JEFFREY BUSH: It's a special assessment and you have to go through...

SENATOR WEHRBEIN: I understand.

JEFFREY BUSH: ...all this process and the county treasurer really doesn't want to do it and so you...I just...and I don't know how you can collect a special assessment, other than a tax sale. And you have to get the country treasurer to sell the property at a tax sale.

SENATOR WEHRBEIN: It can't be a lien, right? It can't be a lien against the property?

JEFFREY BUSH: Currently a special assessment?

SENATOR WEHRBEIN: No. Under this...yes.

JEFFREY BUSH: Currently, it would be a lien but I don't know how you collect the lien, and I think special assessment expires after ten years. So I've had a farmer

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who got the special assessment through my efforts and then the country treasurer told the farmer, well, you can't collect it until this landowner sells his property. Then he'll have to pay the special assessment plus the interest on it. So that's...in that county official's opinion, there's nothing further this land...this farmer can do to collect his money. And I...it's really hard to see how you collect a special assessment if you're a private individual. Special assessment, as it's classically known, is collected by a municipality or a political subdivision but not by an individual.

SENATOR WEHRBEIN: Yeah. I understand. Yes.

JEFFREY BUSH: And the only statute I've found in Chapter 77 that deals with that only gives that authority to a municipality, or to a county, or to some governmental agency.

SENATOR WEHRBEIN: Not for a private use?

JEFFREY BUSH: Right.

SENATOR WEHRBEIN: Yeah.

JEFFREY BUSH: So, it's unworkable as it is. In this new law, once you get the judgment in court and then that will become a lien and that must be paid or else you have all the consequences of a cloud on the title of a nonpaying landowner. So that's much more direct and efficient way for a farmer to get his money.

SENATOR WEHRBEIN: Thank you.

SENATOR KREMER: If you had a very willing, and cooperative, and generous neighbor, he may pay for part of it even if it wasn't any of his...I mean, it's not to say that one person has to pay for all of it, if the neighbor is willing under the law. How would...if LB 934 would have been in effect at the time of your dispute would it have...how would you foresee it would have been settled? Would it have gone clear to court do you think then?

JEFFREY BUSH: Well, yeah. I think it would have had to go through court. In all the cases that I've been involved in,

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it's a dispute that can't be solved amicably. They have to have some stick to get the other party to contribute the money and that's the only way that I would get involved is where they are really at one another's...well, not agreeing. If you agree, it's fine but if you don't agree...

SENATOR KREMER: If you don't, then you have a mechanism to use?

JEFFREY BUSH: ...you need an enforcement tool. This is a much better way to enforce that contribution.

SENATOR KREMER: Thank you. Any other questions of Jeffrey? I want to thank you personally as a committee for the help you've given us on this bill over the interim, too, as we've studied this. So appreciate that.

JEFFREY BUSH: Thank you.

SENATOR KREMER: Okay. Thank you for your testimony. Anyone else wish to testify in support?

JOHN HANSEN: Chairman Kremer, members of the committee, good afternoon. For the record, my name is John K. Hansen, H-a-n-s-e-n. I'm president of Nebraska Farmers Union appear before you today. We are in support of this bill but I wouldn't, you know, give too much credit to that on account of we supported the last bill that created the situation that didn't really work, too. And the reason we did that was because what we had before wasn't working very well either. And so, another example of perfectly good theory riddled by fact and experience. So the current system, I guess we would agree, is not working nearly as well as we had hoped it would when we did that when Chairman Dierks took a shot at it. And I think that this moves forward in some constructive ways and that it certainly lets folks who can get along, get along. And for folks who don't, why then you've got at least a mediation process that we think is a good place to start, and if that's exhausted why you haven't given up your legal standing. But I...our only concern, I guess with this, and I'm not sure how you remedy it is that the folks who do have livestock, and do want and need good fences, are still in our judgment probably going to end up on the short end of the stick and be pretty much where we've been for a long time. Where we have neighbors who have no

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livestock and that we will bear most of the cost most of the time for fencing livestock. And with that, that is my enthusiastic support for this bill. I hope it doesn't condemn the bill by the way.

SENATOR KREMER: Thank you, John. Any questions for John? Thank you for your testimony.

JOHN HANSEN: Thank you very much.

SENATOR KREMER: Anyone else wishing to support...testify in support? In opposition? Testify in opposition? Please come forward. Anybody...okay. No opposition? Okay. Anyone wishing to testify in neutral please come forward. Couldn't tell if you were standing up ready to go for opposition or not, so...

MARVIN HAVLAT: (Exhibit 7) Senator Kremer, members of the committee, my name is Marvin Havlat, that's H-a-v-l-a-t. I'm at 1828 Sunrise Road, Milford, Nebraska 68405. I have here on this computer a fencing situation that exists on my farm in Seward County and the reason I'm neutral, I'm not even sure if it applies here. But it concerns a windmill that sits near the road and I've fenced this windmill off. And this concerns the part of the bill where the six-foot setback with a hedge behind it for 7 years. I'd like to show you this picture if I could.

SENATOR KREMER: Just by turning it around you mean?

MARVIN HAVLAT: I don't know if you could see it, it's pretty...

SENATOR KREMER: Well, we could try.

MARVIN HAVLAT: Because it's not plugged in.

SENATOR KREMER: No, it's not showing up very well.

MARVIN HAVLAT: Can you see that?

SENATOR KREMER: Sort of, it's just the right angle, so...okay.

MARVIN HAVLAT: Right there? Okay. Over here's the county

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road, here's my fence, and there's the windmill.

SENATOR KREMER: The page could carry it around here if you'd like to, she would just love to do that I think. You can go ahead with your testimony.

MARVIN HAVLAT: Okay. I want to fence my windmill off, and maybe the county because the windmill is on the right of way, they maybe want me to go on the other side of the windmill. So if I have it where it's at now, it's like six feet away and then I could plant a hedge behind it, I guess, to maintain my fence. But the fence sits maybe six feet off the roadbed, and it's probably off the edge of the road probably six feet maybe not quite but it just sits right at the edge of my windmill tower. And I just wanted to point that situation out in the fencing law. A little farther down the road there is a stream that comes almost to the edge of the road, and I've put a fence up that barely skirts the edge of that stream. So it's probably closer than the six-foot setback, but then there's a 20-foot drop-off. And so I'd rather put my fence there than have somebody drive off into there. And so I just want to point out those two situations and I don't even know if they apply to this law but it seems like these are situations that you could think about.

SENATOR KREMER: Okay. I would think if you went to the other party and was the county who and ask them, too, about that...

MARVIN HAVLAT: Well, they didn't know...I've already done that, sir, and they didn't know. They were kind of like "pssht," you know, wondering what to do there. Because they said maybe the windmill is like, it's about 100 years old and it has, you know, what you call the law where it's already in place?

SENATOR KREMER: I would think you could make a proposal to them and if they agreed to it. Then there's no problem then.

MARVIN HAVLAT: Well, that's what's going to happen soon but I just wanted to show the situation that fence being less than six feet from the edge of the road.

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SENATOR KREMER: Okay. Thank you. Did you have a sign-in sheet that you dropped it? You do now.

MARVIN HAVLAT: Okay.

SENATOR KREMER: Any questions? Just a second maybe somebody has a question for you. Thank you, Marvin.

MARVIN HAVLAT: Okay. Thank you.

SENATOR KREMER: Appreciate your coming. Testifying in neutral position? Welcome to the committee.

BILL KUEHNER: My name....Mr. Chairman, members of the committee, my name is Bill Kuehner, K-u-e-h-n-e-r, I live at 203 West 9th Road, Doniphan, and my family's been out there, I think, about 138 years, something like that. But I'd like to share a few of my experiences with fences and maybe it'll do you some good and maybe it won't. But one of them, I had a neighbor, oh, he just couldn't afford his half of the fence. He just cried and everything else. The next week I saw in the paper he was in China for six weeks on vacation.

SENATOR KREMER: Probably why he couldn't afford it. (Laugh)

BILL KUEHNER: When he came home, he put up a new pivot and a well. And then I had another one that he just couldn't help fix the fence or install it. And this pasture was about 30 miles from home and I always left a considerable amount of grass there for the next spring. I came back one spring and he'd let the fence down and you could see a gopher run on it a half a mile away, but he couldn't help fix fence. Then I had another time, the Game Commission tore out a half mile of fence between me and them and they proceeded to fill up some channels in the river and so I had to get an attorney and get this stopped. And this was when Mr. Steen was the Game Commissioner and I had a senator by the name of Kremer that was involved in that and I think he was your father and we had quite a go-around out there. And I will always remember that Steen and I got into a pretty heated argument and finally Senator Kremer said to Mr. Steen, he said, I want you to know I'm Chairman of the Appropriations Committee. If you want to keep getting a paycheck maybe you better leave this farmer alone. And that ended that. (Laugh) Except they still haven't put their half

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of the fence in. (Laughter). Then I had another one. There's no livestock involved and my rows run north-south, the neighbors run east-west, there's no fence between us, so he took it upon himself to make his turn into his rows on my side of the fence. My answer to that was, I took my 36-foot disk went right down the fence line and put us both in a road. (Laugh) Then there's a problem of urban people coming out and buying an acreage and that's fine but there's the problem of fence with those, too. They mostly all have a horse, and a cow, and a dog, and a sow and it gets towards fall and they're out of feed. The horse is chasing the cow, and the dog is chasing the sow, and they're all over your fields. But that's about all I have to say, except that I do hope you will not take away my ability to remedy these fence situations with these people that don't want to furnish their half. Thank you. Any questions?

SENATOR KREMER: Any questions for Bill? Bill, we hope that this provides a remedy that...

BILL KUEHNER: Well, I think it will.

SENATOR KREMER: ...that's the intention of the bill, so...

BILL KUEHNER: Okay.

SENATOR KREMER: Thank you for your testimony, Bill. Anyone else wish to testify in the neutral position? If not, we will waive closing and that will end the hearing on LB 934. And we'll open the hearing on LB 1018, Senator Hudkins. She is ready to go. We do have two bills concerning the Wine and Grape Board and we will hear the other one following immediately after this bill, so...Senator Hudkins, welcome.

LB 1018

SENATOR HUDKINS: Good afternoon, Senator Kremer and members of the Agriculture Committee. I am Senator Carol Hudkins, H-u-d-k-i-n-s, and I represent the 21st Legislative District. I'm introducing today LB 1018 and this bill is designed to open the discussions on the means to fund promotional activities for grape production in Nebraska. Over the past ten years, the grape industry has continued to

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grow. The industry was first formally recognized by legislation creating the Winery and Grape Producers Promotional Fund. There was and continues to be assessed a fee on wine produced in Nebraska to be used for promotional and research funding. A board was established under that legislation to determine how the funds would be spent. It's not the interest of this bill to repeal that board but rather to use the board in the furtherance of this legislation. Also before this committee is LB 964 to be introduced by Senator Price. Between that bill and mine, the discussion can occur as to the makeup, the direction, and the purposes that should be fulfilled by this board. This legislation is drafted for the sole purpose of directing the discussion in a manner consistent with other check-off programs currently in use. The corn check-off statutes were used as the platform to structure the Grape Resources Act as established in this bill LB 1018. New wineries are being established and more grapes are being grown in the state of Nebraska. Are all of the grapes being used in wine? Well perhaps we do need two separate boards and perhaps not and this bill is to investigate all of the possibilities. And I would be happy to answer any questions that you might have.

SENATOR KREMER: Thank you, Senator Hudkins. Any questions? Senator Cunningham.

SENATOR CUNNINGHAM: Senator Hudkins, of the wineries that are out there now, do most of them support your bill?

SENATOR HUDKINS: I can't tell you that. I don't know. I think you are going to hear from one particular one that's not real supportive and I think you might hear from several others that are supportive. So it's probably a mix.

SENATOR CUNNINGHAM: Well I'd like to thank you for the work you've done. Whether this bill is the right thing or not, I don't know but you've done a lot for the wineries and we appreciate that. That's value added agriculture...

SENATOR HUDKINS: And, Senator Cunningham, that is why I have always been working with the wineries and the grape growers is because it is an alternative crop. It's another way for the farmers in Nebraska to increase their income. And whether this bill is the way to go, Senator Price's, a

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combination of the two, or something else. This is just meant for discussional purposes at this point.

SENATOR CUNNINGHAM: Thank you.

SENATOR KREMER: Any other questions? Senator Wehrbein, I think I saw him first then Burling.

SENATOR WEHRBEIN: Go ahead.

SENATOR KREMER: Okay.

SENATOR BURLING: Senator Hudkins, do you know how many grape growers there are in the state?

SENATOR HUDKINS: I don't at the present time because we have more growers every year.

SENATOR BURLING: Okay. I was just thinking eight districts per board. If 25 percent of the growers in each district sign a petition to put a person on, in some cases that could be a very, very small number maybe, right?

SENATOR HUDKINS: It could be.

SENATOR BURLING: Twenty-five percent of the growers in a district?

SENATOR HUDKINS: Uh-huh.

SENATOR BURLING: And that's why I was wondering how many there were in the state. I suppose the districts would be...lines would be drawn so there is an even number of growers in each district.

SENATOR HUDKINS: I would think, looking who's behind me, that there are people behind me that could probably answer that question.

SENATOR BURLING: Okay. Okay.

SENATOR KREMER: Senator Wehrbein, I think you had a question.

SENATOR WEHRBEIN: I guess this is a dumb question, but I

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missed what you said. What's the difference between the Winery and Grape Producers Promotional Fund and your proposal, Nebraska Grape Resource Act? I mean I apparently already have the...

SENATOR HUDKINS: We already have the one and this is a different title, I think Senator Price's bill if I'm correct also uses my title or something very similar. And what I said before, we have wineries and we have grapes. Are all of the grapes being used for the wineries?

SENATOR WEHRBEIN: Okay. I missed that sentence. Thank you.

SENATOR KREMER: This would be two different boards?

SENATOR HUDKINS: It could be or if you...

SENATOR KREMER: Or else they could combine them. That would be up to the discretion of the industry there.

SENATOR HUDKINS: And your discretion, too, I suppose, what you would like to see done.

SENATOR KREMER: I guess we probably need to ask them how many belong...

SENATOR HUDKINS: Ask the growers and the...

SENATOR KREMER: ...to the organizations, if there are two organizations or where we're at on that.

SENATOR HUDKINS: Uh-huh.

SENATOR KREMER: Okay. Seeing no other questions, thank you.

SENATOR HUDKINS: Okay. And I will waive closing.

SENATOR KREMER: Thank you, Senator Hudkins. Okay. I failed to introduce Senator Chambers just arrived a little while ago from Omaha and we thank you for coming. Anyone else wishing to testify in support of LB 1018? If you...how many others would like to testify in support? Let me see your hands please. Okay. Be ready to come right up and

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have your sign-in sheet ready and everything if you would.
Place it in the box, thanks. Thank you.

DAVID HANNA: Senators. My name is David Hanna, H-a-n-n-a. I'm from Lexington and I represent Millenium Winery and Vineyard and I also represent the Nebraska Wineries and Grape Growers Association as president-elect. We have a membership of 15 bonded wineries to date and over 100 of the state's grape growers. In answer to a question, we think there is approximately 200 and I think our membership said 134, but I didn't count because a lot of individuals are members. The bill that is before you would place a fee on grapes grown in the state and the firstbuyer, usually the winery, would deduct that fee from the proceeds of the sale. It should be noted that wineries are also grape growers and will be paying, as I understood it, the check-off fee on the grapes that they produce in their vineyards. I bring this point up as there as been some comments from our membership thinking that the wineries would not be paying this fee. As I read the current laws, we will be paying the extra \$10 if this goes through. Some of the wineries in the state, by the way, are the biggest grape growers. We have one newly bonded one in the North Platte area that has 28 acres of grapes. My winery, I have six acres, so they are big. The association realizes that there must be funds to provide for promotional research, education of the Nebraska grape, and wine industry. The wineries already collect an equivalent of \$20 per ton. It's based on 160 gallons. We're kind of taxed on the finished product all of a sudden. The 160 gallons is what is produced by a very good ton, and we pay out of that...out of our own revenue, not collecting it from the grower. These funds are collected by the Nebraska Liquor Commission and administered by the current Nebraska Grape and Wine Board. We would like to go on record as suggesting the bill be revised to direct those check-off monies toward the existing board. The current \$20 generates approximately \$5,000. It's not much. Another \$10 collected on the grapes that are sold will make it another \$2,500 or about \$7,500 total. The wineries would be paying \$30 per ton. The amount of monies generated should increase with time. Grape plants' peak production is between seven and nine years and we have whole lot that will be coming on line before long, so this number should increase. The current board is five members appointed by the Governor and created by the Nebraska Grape and Winery Act. It is an advisory to

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the Governor, to the Nebraska Liquor Commission, and to the Department of Agriculture. This year it allocated 30 percent to research through the university and 70 percent for promotion of the industry. We feel that there is not a real need for a second board with no more money than this producing if you've only got 2,500, 3,000. It's going to be tough to get seven people together and we think there's room for talk on that. The five that are there already, in Senator Price's bill, there are some modifications that we would like to do there. We just feel that the concept is correct. The check-off is going to be needed for the industry to step forward and prove that we are going to go after an aggressive program...promotion and research. We think that the committee could very well...rather, the board could very well be the one that is currently in existence. And that's the comments that I would like to make on behalf of the association and myself. Thank you.

SENATOR KREMER: Thank you, David. Any questions? Senator Burling.

SENATOR BURLING: Thank you, Mr. Hanna. You say there is currently a board of five appointed by the Governor?

DAVID HANNA: Right.

SENATOR BURLING: What's the criteria for membership? Are they all grape growers or can they be who?

DAVID HANNA: They're basically all within the grape industry, yes. We do have one person on that is from the university for the research side of it. But all the rest of them have had a grape background, either growers or a winery.

SENATOR BURLING: Thank you.

SENATOR KREMER: I have a couple questions, excuse me. Currently you collect around \$7,000 and a different means of collecting than what the new proposal is. Why don't you just increase your contribution now, because the next one you talked about increasing it up \$2,500 more and they're both...

DAVID HANNA: What it amounts to is the wineries are

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assessed \$20 per 160 gallons of production.

SENATOR KREMER: Okay.

DAVID HANNA: Okay. The grape growers are not assessed any of that. This is basically...

SENATOR KREMER: So this would come from the grape growers and the other from the wineries?

DAVID HANNA: Yeah. And what I'm trying to bring up is that the wineries are not necessarily in opposition to this. We're going to end up paying an extra \$10 a ton, but we're hoping to spread it out across the whole wine industry so it's more of a united type thing.

SENATOR KREMER: So you feel like mainly it's so it spreads the cost out over more otherwise...because for only another \$2,500, it seems like you could just raise your fee...

DAVID HANNA: Right.

SENATOR KREMER: ...and have the money under the same board and same...

DAVID HANNA: Well, we don't have the authority to raise it. And again, we have to collect it. The wineries will be probably the first shot at the grapes, although there is a chance for a completely different grape, you know, the juice industry, whatever. So this is basically...the association is for the promotion of the wineries and the grape growers and we feel that the grape growers, this fee of \$10 would be less than 1 percent of their gross sales. We hope that's not something that they would find remiss. The comments that I've had come in just wanted to make sure that the wineries weren't shirking their responsibilities, and most of them think that \$10 to promote their industry would be good. If we don't promote the industry, the wineries won't have sales the way they should be and they won't be buying the grapes from outside the source. They'll be doing it all internal.

SENATOR KREMER: And who collects the new proposal here?

DAVID HANNA: The impression I would get is that it would go

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through this current system, which basically we send in a form at the end of the year after crush to the Nebraska Liquor Commission with a check for how many gallons we fermented, I think is the proper term.

SENATOR KREMER: And then they would...

DAVID HANNA: And it ties directly to the federal form that we send into the TTB.

SENATOR KREMER: Okay. Do you know what the cost of administrating and setting up a new program to be?

DAVID HANNA: I have no idea. I really don't. I would think that if it goes with the same system, the cost would be minimal. But I don't know that.

SENATOR KREMER: Senator Cunningham.

SENATOR CUNNINGHAM: Yes. You mentioned the check-off where most grapes grown go to the winery.

DAVID HANNA: Right.

SENATOR CUNNINGHAM: And the winery or the check-off is used to promote the wine industry I would assume.

DAVID HANNA: It's got to promote both, but the wineries are basically right now the source to get rid of the grapes. What I guess I'm saying is we're using...Nebraskans drink 2 percent Nebraska wine. In other words, out of 100 percent of all their wine sales, it's 2 to 3 percent Nebraska. We have to make awareness within the industry to get that up and going, otherwise it is going to be a situation where we won't be selling the grapes and we won't be buying outside grapes. The growers...we're getting more and more growers all the time. It's a tremendous amount of work. It creates a tremendous labor thing in the fact that I tell everybody when they're thinking about growing that every plant creates one hour of your time during the year, and that's 500 plants per acre. If you've got 5 acres, you've got 2,500 plants. I have 6 acres and I have 2,800 plants and we do have to hire people to help us maintain it, and I'm small.

SENATOR CUNNINGHAM: Well, where I was going with that, if

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you have a grower out there that comes in and is marketing all of his grapes to a juice manufacturer, he would pay the check-off but the check-off wouldn't be used to promote juice, it would used to promote wine.

DAVID HANNA: I think that it would be to promote the whole grape and wine industry. Right now, agreed, we're the main man on board. If there was a juice industry, I would hope that that juice industry would come on board with the association and help us promote their entity. Right now we don't have that in the state of Nebraska. That doesn't mean it won't occur. We do have people that are creating jellies and they're members, and we do have people that, you know, it's small scale. It's not on the radar blip as far as noticeable. That's a true opinion.

SENATOR CUNNINGHAM: Okay. Thank you.

SENATOR KREMER: Any other questions? Of the percentage of grapes that are purchased by the wineries, what percentage would be, I know you may not know exactly, that the wineries own in their own vineyards? Or what percentage would be contracted to other landowners or grape vineyard owners?

DAVID HANNA: I can only give you an example from my area. I bought 20 percent grapes from outside on my winery and across the river and to the north of Lexington is Mac's Creek Vineyard and Mac's probably, he's much bigger than me by six times, and I think he probably buys 80 percent.

SENATOR KREMER: From other...?

DAVID HANNA: From other grape growers.

SENATOR KREMER: In the area or...?

DAVID HANNA: He travels to Ogallala.

SENATOR KREMER: So he could have somebody that comes around and sells them to you from other areas then.

DAVID HANNA: People come to him, yeah, to sell.

SENATOR KREMER: Okay. Thank you, David

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DAVID HANNA: You bet. Thank you.

SENATOR KREMER: Next one wishing to testify in support.

JOHN FISCHBACH: Good afternoon, Senator Kremer.

SENATOR KREMER: Did you have a sign-in sheet?

JOHN FISCHBACH: Oh, sign-in sheet. I got it.

SENATOR KREMER: There you go. Thank you.

JOHN FISCHBACH: (Exhibit 8) Senator Kremer, good afternoon, members of the committee. My name is John Fischbach, that's spelled F-i-s-c-h-b-a-c-h, and I'm here in to support LB 1018. I am currently on the Nebraska Winery and Grape Growers Association legislature committee. I was in the meeting when this bill was discussed in Senator Hudkins' office. The chairman of the board, I don't know if he going to be testifying today or not, I hope that he will, Jim Ballard from James Arthur Vineyard. And I had notes on why the board...or the bill was presented written up like it, you know, like it was said before. Taking the Corn Board's statute and then more or less substituting in wherever it said corn, you know, wine and grape. And I was having a little trouble with that bill, because on, I believe page 7 paragraph 1, it mentioned how the Grape Board was...will be allowed to enter into contractual agreement to build a winery. And I thought, well, I can see how the corn growers can probably get a...enter into a contract to build an ethanol plant but to have this board be able to have its own winery got me a little concerned. So I kind of went through and I have a handout for the committee. Basically, it was...I had to take the language that was in the...on the bill and kind of took out the things that was not pertaining to the grape and wine industry. It...as I noticed the rough draft of this bill that was presented and it was originally at \$3 per ton and I now notice that the final draft or final bill is \$10 a ton. So the grape growers themselves have increased the price that it was. And it's true that the wineries at this point pay into the Nebraska Winery and Grape Producers Promotional Fund through the...on the Winery Act \$10...excuse me \$20 per ton of...actually it was a per ton basis but they did change it to 160 gallons so that would also include grape, excuse me, apple, honey wine, so

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it would include everything that they produce so they're really substantially putting into this fund. To make comment on Dave Hanna's comments, we have, according to the 2004 census that the current board did last year, we have 150 growers in the state, of that 150 growers, we have 177,000-plus plants that are planted. And it is estimated that if you do the mathematics all those plants should become mature by next year, and that would produce roughly 169,000 gallons of juice. Currently right now, the wineries can only utilize about 45,000 gallons of that produced...of grape juice. And, of course, that's not including...their 45,000 gallons would also include honey wine, apple wine, and any others they wish to produce. On Senator Cunningham's comment on the utilization of the funds, I've got the Liquor Control Commission's handbook here, rules and regulations. Basically, Section 53-304, winery payments required, Winery Grape Producers Promotional Fund created use and investment. There's a paragraph in there that deals with all revenue credited to the fund shall be used by the Department of Ag at the direction of and in cooperation with the board to develop and maintain programs for the research and the advancement of the growing, selling, marketing, and promotion of grapes, fruits, berries, honey, and other agricultural products and their by-products grown and produced in Nebraska for use in the wine industry. So at this point, the board is set up to utilize funds. Right now it's just through the winery industry that are providing funds at this time. This bill would give the grape growers that chance to supply money to that fund. Again on this amendment that I had, I don't think it's really fair for the wineries to pay additional. I mean they already pay in \$20 per ton or \$20 per 160 gallons of juice. So this would just...this amendment that I was presenting would exempt them from that. So you have...they would pay in the \$20 per 160 gallons and the grape growers would pay in \$10 per ton into this Producers Promotional Fund for the marketing of and selling of fruits and wine. Further down, wine is mentioned in the paragraph. I guess at this point I will offer any questions.

SENATOR KREMER: Any questions? Senator Cunningham.

SENATOR CUNNINGHAM: Earlier it was stated that the check-off would remain approximately \$2,500. If you exempted the wineries, how much would that eliminate?

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JOHN FISCHBACH: Well currently as of 2000...last year's annual report of the Grape and Wineries Board, the wineries only brought in \$4,900. It was reported earlier that there was \$7,000 and that was...and there was a NWGGA did have from the year before, 2004, a contractual agreement of like 39...\$3,000 plus that they didn't use. So that went back into the fund. So you take the 49 plus the 3 and then you get the 7,000 of the grape growers...of the census. It was estimated that we produced 170 tons of grapes in the state, \$10 ton that would be \$1,700. So yeah, if you take out just, you know, take out all the wineries for what they produce, I don't know what the total acres that we have in the state that are pertaining. The census, and I guess, the census was taken and it was on the honor system that they turn in accurate information so we could only go by what...and plus on top of that, we only had about 90 percent of the per se growers within the state that actually turned in a report. There was a couple of wineries that as of today that I know of have not turned in the census. So it's kind of hedging as far as exactly how many acres do we have that are pertained to strictly to wineries. Maybe a total of...I'll say maybe 120 acres that are owned by the wineries themselves.

SENATOR CUNNINGHAM: As a percent, do you know what that is?

JOHN FISCHBACH: A percent, that would be probably 120 out the estimated 150 growers we have, less than 200 acres in the state at this time, so 80 percent.

SENATOR CUNNINGHAM: So over half.

JOHN FISCHBACH: Eighty percent would be owned by the wineries.

SENATOR CUNNINGHAM: Okay, but I still missed it in your answer.

JOHN FISCHBACH: Okay.

SENATOR CUNNINGHAM: The current bill did I hear earlier that it would bring in about \$2,500?

JOHN FISCHBACH: That was by my president-elect, Dave Hanna.

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SENATOR CUNNINGHAM: But he did say that?

JOHN FISCHBACH: Yeah, he did say that.

SENATOR CUNNINGHAM: So if that's accurate, if it was \$2,500 and you eliminated half of it with you amendment, you bring in \$1,250.

JOHN FISCHBACH: Twelve hundred.

SENATOR CUNNINGHAM: Would that be worth...

JOHN FISCHBACH: And that was just was, you know, and a lot of those growers like I said will become mature in 2007, maybe 2008, takes four to five years for the grapes to be (inaudible). So, you know, you figure that we're going to have over...in 2005...and it's on the Internet at the NWGGA's web site...we will have...by 2007 we will have over a 1,000 tons produced in the state. So if 1,000 tons...if the figures are right, the people that turned in the census, 1,000 tons and 80 percent of those are wineries then you've got 200 tons at...I guess be...I guess closer to his \$2,500. Because what's mature now, what's going to mature later is...

SENATOR CUNNINGHAM: Thank you.

SENATOR KREMER: Any other questions? Senator Fischer.

SENATOR FISCHER: Yes, John, thank you for being here. I believe I received a letter from you dated the 21st of January.

JOHN FISCHBACH: Yep.

SENATOR FISCHER: Where is your vineyard located?

JOHN FISCHBACH: I'm in Lincoln. I am not a commercial vineyard. I have enough grapes in the ground to produce about maybe 10 gallons of wine and I'm more into port than I'm into straight wine. I'm also a past president of the Lincoln Wine Guild. I've been making wine since 1972.

SENATOR FISCHER: Okay. In your letter you say you're in

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favor of the bill and basically you'd like to see the Nebraska Grape & Winery Board restructured. Is that correct?

JOHN FISCHBACH: That would be on the next bill that's going to be presented, LB 964.

SENATOR FISCHER: Okay. I will ask you questions when it's on that. Are you going to be speaking on that one, too?

JOHN FISCHBACH: Yes.

SENATOR FISCHER: Okay.

SENATOR KREMER: Okay. Any other questions? Thank you, John for your testimony. Anyone one else wishing to testify in support? In opposition? In neutral capacity? Seeing none, Senator Hudkins asked that closing be waived, so that will close the hearing on LB 1018. and we'll open the hearing on LB 964, Senator Price is here for that. Welcome.

LB 964

SENATOR PRICE: Good afternoon, Chairman Kremer and members of the Agricultural Committee. I am Senator Marian Price and I represent the 26th Legislative District and I am here to introduce LB 964. LB 964 changes the membership and the name of the Nebraska Grape and Winery Board to reflect more of a marketing emphasis. Under LB 964 the board would be named the Nebraska Wine and Grape Promotional Board. There would be seven members instead of the present five. The members would come from specified industries including restaurant owners, travel and tourism, and bed and breakfast owners. Two members shall also be members of the Nebraska Winery and Grape Growers Association. The board would be continued...the board would continue to be funded with a \$20 surcharge on every 160 gallons of juice produced or received by each Nebraska winery. The money shall be used by the Department of Agriculture at the direction of and in cooperation with the board to promote grapes and their use in the winery industry. A constituent grape grower is here to further discuss the changes made by LB 964. At this point, I would be happy to answer your questions and I thank you for listening to the presentation of the bill. Are

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there questions?

SENATOR KREMER: Any questions? Does this bill have the support of the grower association? Are there people here to testify do you know?

SENATOR PRICE: The support of them? I would imagine there would be support, and I would imagine there would be opposition.

SENATOR KREMER: From the association?

SENATOR PRICE: I don't know, sir, I haven't heard from any...

SENATOR KREMER: Okay.

SENATOR PRICE: ...directly. I mean there has been different questions asked of me so there will be a following that will come behind me at my opening and I would be happy to stay here and close and then welcome further questions.

SENATOR KREMER: Okay. Thank you. Any other questions? Thank you, Senator Price.

SENATOR PRICE: Um-hum.

SENATOR KREMER: Those wishing to testify in support, please come to the front of the room. Welcome, John.

JOHN FISCHBACH: Hello again. Page, box.

SENATOR KREMER: Try to not repeat a lot of what you said before...

JOHN FISCHBACH: Okay.

SENATOR KREMER: ...I mean, if there's a difference in the bills and what you'd like to see different, why...

JOHN FISCHBACH: (Exhibit 9) I've got a big packet for each of you. You know my name is John Fischbach, I am here in support of LB 964 at the request of Senator Price. Since reading this bill, I've been doing a lot of research on the Internet to see how other states handle their respective

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grape and wine boards. Once you open up the package, the top page pertains to Missouri's senate bill showing how they run their board, showing term limits and diversification of their board members. The next two pages pertain to Michigan. It shows what industries are represented on their board. Next page is a double-sided page pertaining to Colorado and it shows what that board accomplished, allowing more members to be on the board. There is a page in there showing Nebraska map, shows the current 15 wineries and where they're located. The next page is...has the census that was on the Internet. That's a yellow...I mean...well, what do call that, a greenish copy would be the census and gives you the idea that we have a potential of 169,000 gallons of grape juice to produce in the state. The problem is that we have at this time, once those grapes become mature we're going to have an excess and 124,000 gallons of juice. I know we have one grower, large winery in the state, that is very concerned at this point about how many growers we do have in the state because of this excess. And if you look at the current situations with California where they have an excess of juice, usually the price per ton goes way down. And that's not good for the growers, so I'd like to see a larger board that has more diversification to be able to handle that issue. Some of you were at the Nebraska Winery and Grape Growers Association legislature dinner where Jim Anderson from Missouri spoke on their industry. And you may have heard comments during the dinner on how much we in Nebraska would like to be in their shoes right now. You know, right now they've got tremendous tourism...tremendous tourism industry and I got a comment here that maybe someday Grand Island can be the next Branson. Right now they have nearly 10 percent of their market's share. I'd love that, you know, I'm sure the wineries here would love to have 10 percent of the market share here in Nebraska and that would be nearly 200,000 gallons of wine and about approximately \$30 million dollars left in our rural communities plus whatever tourism dollars are spent on lodging, food, and visiting other Nebraska attractions. The last page of that packet pertains to an amendment that I've drawn up that I have heard from discussion from my fellow members of the association that pertained to having other than grape and wine members on the board. And one in particular was the B and B people. I've also heard comments, you know, if we allow all the restaurant people in on this board, they're going to want

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their portion of the funds. And I can see a partnership forming between the wineries and the restaurant association as far as the topic of bring your own beverage. And I don't know how many people know that it is not illegal to bring your own beverage into a liquor establishment. Liquor Control Commission actually had a newsletter on that a couple years back. It's not illegal as long as you have permission from the manager of that liquor establishment and they most times will charge you a corkage fee to open up that bottle of wine. And then of course if the "doggie bag" bill goes through, then the person that brought in that bottle of wine or if he purchased wine at that restaurant would be able to take home that half bottle of wine. I do believe that this new board is presented...I mean the amendment where it would give the winery and grape growers an extra seat on the board so that would give them four votes. I don't see how...most times I've been at these...the Grape and Winery Board meetings, that there's never really been too many no's to the motions that were presented. It would be the four and then there would be three more, three or four more votes so it at least it gives them 50 percent of the control over their own board. And the way the law states, it's already in there that, you know, it has to go for research, marketing, and promotion of grapes and wine. So I don't know how the restaurant people are going to get their share of those funds. So I do please ask your help to forward this bill on to the General File and promote any questions at this time.

SENATOR KREMER: Any questions? Senator Fischer.

SENATOR FISCHER: John, are you representing the Wineries and Grape Growers Association as their legislative committee?

JOHN FISCHBACH: I am not. I'm a past committee...or past marketing committee chairman. I did a...we had a new president and she restructured the...

SENATOR FISCHER: Are you on the legislative committee?

JOHN FISCHBACH: I am on the legislature committee at this time.

SENATOR FISCHER: Okay, but you're representing yourself in

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this testimony?

JOHN FISCHBACH: I guess, I don't have the blessings from the Grape and Winery Association. I know that there was discussion that, yes, we need to change the board, but this is not the way to do it. And you look at other boards across the country, that's the way they do it. They have other restaurant people on there, they have the retail people on there, they have the Department of Ag people on there. It's plus...

SENATOR FISHER: Okay. I do appreciate the packet of information you gave us on that. My question, I just wasn't clear...

JOHN FISCHBACH: Yeah.

SENATOR FISCHER: ...who you were representing but it is personal?

JOHN FISCHBACH: I'm on the legislature committee but I know I'm crossing lines at this time because I've received an e-mail that says that the association...

SENATOR FISCHER: So you better say...

JOHN FISCHBACH: ...as whole does not support it.

SENATOR FISCHER: ...you are representing yourself?

JOHN FISCHBACH: Yeah.

SENATOR FISCHER: Okay. Thank you.

SENATOR KREMER: Senator Wehrbein, did you...

SENATOR WEHRBEIN: Real quick. We have a lot of discussion about wine. Is there much of a market for grape juice in Nebraska?

JOHN FISCHBACH: Yeah, and jams and jellies. I know Blue Valley Vineyard up in Crete. She sells quite a bit of jellies out of her...that are made locally.

SENATOR WEHRBEIN: Now how about grape juice?

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JOHN FISCHBACH: Grape juice?

SENATOR WEHRBEIN: Like you buy...

JOHN FISCHBACH: Other than, I know, there's a couple of wineries were thinking about bottling grape juice and selling it to the kids that come into...with their parents into the winery would be another market. I don't know if we have any Concord grape juice or, you know, grape jelly industries in the state. Yeah, I mean there's going to be an excess of juice and we're going to need to look outside the state to sell those or have more wineries. The current wineries are by law allowed to produce 50,000 gallons per winery. They are allowed to produce up to that amount of wine. And you take the current 15 wineries and that's 450, let's see, 15 times, yeah, that 750,000 gallons. So now we're going to need more growers or we're going to have to buy grapes from other states. A lot of the wineries will not go above 30,000 gallons because, according to state law, any wine that's produced above 30,000 gallons they are required to go through, by state law, are required to go through a distributor. And I know there are a lot of wineries that don't want to that because, the wines that we produce in this state are French hybrids. Very few of the vinifera varieties--the Riesling, the Cabernets, the Gewurztraminer--can be grown in a triangle portion of the...down by Falls City. Those grapes seem to be able to survive. But the grapes that we grow up here, generally don't have enough tannins in them to really last long in the bottle. And so of course you go through a shooter and, you know, there's no guarantee he's going to sell your wine. And, you know, if it sits on his dock...warehouse for over a year, pretty much it's going to go bad cause we can't grow those varieties that really have the high tannin content like Cabernet Sauvignon does to be able to age it in the bottle. So these would be consumed considerably young, you know, a year, probably not any longer than that. And most, you know, white wines most...they tell you let it age for three years before you drink it and most red wines plan to age it for another five or ten years before it really gets mellow, before it's drinkable.

SENATOR KREMER: John, we're learning a lot about wine...

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JOHN FISCHBACH: Yeah.

SENATOR KREMER: ...we're trying to address these bills...

JOHN FISCHBACH: I know.

SENATOR KREMER: ...and you came to testify in support of both of them.

JOHN FISCHBACH: Both of them.

SENATOR KREMER: So we're probably got a lot of work to do...

JOHN FISCHBACH: Okay.

SENATOR KREMER: ...and see how the industry feels about it.

JOHN FISCHBACH: Okay.

SENATOR KREMER: Any other questions of John? Thank you for your testimony, appreciate it. Were you kind of instrumental in introducing this bill? Is that from your...?

JOHN FISCHBACH: I had discussed it quite a bit with a couple of senators and they took it upon themselves to write up the bill and...

SENATOR KREMER: Okay, and you helped them with it then?

JOHN FISCHBACH: ...entered it in. Yeah, I helped with that, with my concerns that...

SENATOR KREMER: Okay. Mainly it seems like the difference is that the board structure, and the board, and so forth so we'll need to work together with some others.

JOHN FISCHBACH: Yeah.

SENATOR KREMER: Thank you for your testimony. Anyone else wishing to testify in support of LB 964? How about in opposition?

DAVID HANNA: Senators, again, my name is David Hanna,

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that's H-a-n-n-a, and again I represent Millenium Wines, Lexington and I am representing the Nebraska Wineries and Grape Growers Association. The board has met on these bills and we have taken a position that we are opposed to this particular bill not because of the intent. It's more that, again I talked to the president of the current board and said how many dollars did you take in last year, and he said \$5,000. Well, if you take 20 into that, that's 250 tons, now whether it's grapes, or apples, or whatever. Okay, what do think for next year, \$6,000. And where we were coming at it was that if you have five people on the board and they have a grape industry background, they're probably going to go for the research and promotion that we hope they go for. Our concern was putting outside entities on this board and creating a bigger board. Eric, last night, said that's it tough to get the five together. And if we have a whole group of them from out in the western part of the state, I can tell you it takes some driving to get here, but we would. Our...it's the contention of the NWGGA board that the current purpose and responsibility of the Grape and Winery Board needs to be revisited. There's no doubt the five and the definition of it needs to be revisited, but we're not sure this bill is the way to do it. We are in the process within the NWGGA developing partnerships with the bed and breakfast and all these other organizations on a one-on-one basis. If you want to know how we're doing it, we give them a free membership in our association and they give us free membership in theirs. It's that simple. We show up at their convention, they show up at ours. We feel that this committee, that this Grape and Winery Board should remain grape and winery people. And I'll close with those remarks.

SENATOR KREMER: Okay. Thanks, David. Any questions?
Senator Preister.

SENATOR PREISTER: Thank you, Senator Kremer. My question is regarding kind of the by-product. What happens to the skin, to the seeds, to the things that are not used in making the wine in the process?

DAVID HANNA: We produced 662 gallons of wine last year. Didn't produce a whole lot of that stuff. But we compost it and put it on my wife's garden if you want to know the truth. It doesn't amount to much right now. But as time

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goes by, you can use it, back on the vines. In California where there is heavy production, they use it back on the vines, take it back to soil.

SENATOR PREISTER: Okay. What one of the reasons I was asking because grape seed extract has a very high antioxidant content and is sold for very high quantities of money. And if you grow it, most of it needs to be certified organic for the purchasers.

DAVID HANNA: Right.

SENATOR PREISTER: But it's very expensive and would be a good by-product and some additional revenue I would think.

DAVID HANNA: Right. A lot of us have looked into to it. The organic thing is something that some of us are...especially in the western part of the state where we don't have molds and fungus because we're dry.

SENATOR PREISTER: Sure.

DAVID HANNA: We're looking into it. I use the grape oil for cooking a lot of times. It's great stuff and you're right. But it takes special equipment. It's just coming down the road. This is still an infant industry within the state. We're still small.

SENATOR PREISTER: Okay. Thank you.

SENATOR KREMER: Thank you, Senator Preister. Any other questions? Seems to me like, you know, \$2,000 not going to go too far in today's world in advertising...

DAVID HANNA: That is a concern that we have.

SENATOR KREMER: ...and research. I mean even research probably be hard to get anything.

DAVID HANNA: Well, and John has a point. We have quite a lot of vines in the industry. I mean, they're in. They're planted. There's a chance that eventually this fund could exceed \$10,000, could exceed \$15,000, could exceed \$20,000. I see it five years down the road. Two thousand dollars now would be tough to have a board to even think they had a

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purpose. Maybe with the \$5,000, and \$2,000, or the \$2,500, \$7,500, the current board could work with it because they are already. It's in place. We as a board just felt that another board was not necessary. We agree that the current board maybe needs to be more defined but that's our stance.

SENATOR KREMER: Okay. Looks like even LB 1018 then, if you wanted to build the current board, maybe the board would need some work done, this one.

DAVID HANNA: We think there's room for.

SENATOR KREMER: We're not ready to kick this out on the floor without some more work on it. Are you willing to work and try to come up with...and it'd be good if your association could get together and...if you think or maybe the LB 1018 is...

DAVID HANNA: We would be happy to work with them.

SENATOR KREMER: ...in the form it should be.

DAVID HANNA: Senator Price promoted it and the intent we like. It's just we don't think it's necessary to revamp it this strongly.

SENATOR KREMER: Then LB 1018, you're okay then with the way that it is structured?

DAVID HANNA: LB 1018 again like I said, I don't want to see a new board for LB 1018. I think it should go...the money from that should go into the current one. The way we read it is that LB 1018 would create a whole separate board.

SENATOR KREMER: Okay.

DAVID HANNA: We think it would go into this board. This board that we are looking at, we're working with it today. It can be modified or addressed. We just feel that we can work the partnerships within the association better than having them on a board. We're not sure, John brought it up, if they'll want some of the money for their association if they're on the board. I just don't know.

SENATOR KREMER: I guess it would be good if your board

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could get together and work out the wording and the structure of the board and everything like that. So we want to be responsive to what...

DAVID HANNA: We will be having a lot of meetings.

SENATOR KREMER: ...you want. Rather than we come with ideas to you, so...

DAVID HANNA: That would be good.

SENATOR KREMER: Thank you, David. Appreciate your coming...

DAVID HANNA: Thank you for your time.

SENATOR KREMER: ...or I'm sorry. Any other questions for David? See none, thank you for your testimony. Anyone else wishing to testify in opposition? In a neutral capacity? Senator Price would you like to close?

SENATOR PRICE: Thank you, Senator Kremer. I did not know who was for and who was against. I was not hedging your question. I just did not know...

SENATOR KREMER: That's...I understand.

SENATOR PRICE: ...you know, who was in the audience and who would be testifying. Are there questions? All right. Oh, uh...

SENATOR KREMER: Senator Cunningham has a question.

SENATOR CUNNINGHAM: Just briefly, what would in your view be the point of someone from the B and B industry being on this board? Or did yours include the B and B?

SENATOR PRICE: Yes, it included restaurants and...

SENATOR CUNNINGHAM: I mean what would they...how would they help promote the grape industry?

SENATOR PRICE: I just introduced the bill for my constituent, sir, and I do not know how there might be the benefit of promoting it, you know, more, and having it in

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their bed and breakfast, their establishment, you know, more exposure because this was to promote business and their product. You would have to...that I do not have an answer for you, Senator Cunningham.

SENATOR CUNNINGHAM: Okay. Thank you, Senator

SENATOR PRICE: But you know the more exposure, the more use of their...of the product that's being produced.

SENATOR CUNNINGHAM: Okay. Thanks.

SENATOR KREMER: Any other questions for Senator Price? Thank you very much.

SENATOR PRICE: It was a pleasure to be here in front of your committee. Thank you.

SENATOR KREMER: Thank you for coming. That will close the hearing on LB 964 and I will open the hearing on LB 916. Our Vice Chairman is not here, Senator Preister, would you like to conduct?

SENATOR PREISTER: Yes, Senator Kremer, I will conduct the proceedings and as you're ready, please begin your opening.

LB 916

SENATOR KREMER: Thank you. My name is Bob Kremer. I represent the 34th District, and I'm here to open on LB 916. It has to do with the Competitive Marketing Act. I'll give you a little bit of a background on where we're at and why we have a need for this bill. The Nebraska Competitive Marketing Act was enacted by the Legislature during the 1999 Session. The act requires packers to make daily and other periodic reports of prices paid and other data for both cash and contract purchases of cattle and swine. The price reporting provisions to have been effective February 15, 2000. The act provides for a reporting fee of two cents per animal reported. When it was initially enacted, the Legislature also provided \$52,000 which was a direct appropriation to the Department of Agriculture as seed money to enable preparations for the February 15, 2000 start-up date, including hiring of personnel, acquisition of

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software, and other necessary preparations. The act also required the department to promulgate regulations to carry out the price reporting and other provisions of the act. Subsequent to the Nebraska's enactment of the Competitive Marketing Act but prior to the date of implementation of the price reporting provisions of the act, Congress enacted a Livestock Reporting Marketing Act in 1999. Then the federal act expressed preemption of any state laws. So we were preempted so it never did go into effect. So what we have now the...I don't remember exactly the date, at about, I think maybe November sometime, the federal mandatory price reporting requirement ceased to exist, and there's a lot of speculation that it will be reenacted. But the way it's written now, that our Department of Agriculture is supposed take over as soon as the federal requirements stopped. And they're not in any position because they haven't had the rules and regulations put into place. We have no funding because the \$54,000 was given to them went back into General Funds. And so we had to come and basically set up some time lines for the Department of Agriculture to be responsive in case that the federal mandatory price reporting never gets reinstated, or if it does get reinstated then that we can act better than, actually kind of be in violation that we're suppose to be doing something now but we don't have any way to do it. So the bill as we have read that would act...would add new provisions to the Livestock Competitive Marketing Act to define the procedures and the timetable for the Department of Agriculture. It amends the LB 50...or the Statute 54-2603 to expand the statement of legislation intent to reaffirm the volume...the value of mandatory price reporting. Section 3 of the bill is the new section and it acknowledges that the preemption of the mandatory price reporting law so that if the federal government does something again that would be preempted. And then the two parts that are probably the most significant of the bill says if Congress fails to reauthorize the Livestock Market Reporting Act prior to December 1, 2006 then that assigns the duty to the director to prepare a budget, request sufficient funds to carry out the department's responsibility as soon as it is practical that date. And Section 54-2607 and Section 54-2627 will become operative on October 1, 2007. So if they fail to authorize it, then it would give them some time that they could enact the rules and regulations, and request the money, and what it would take from the appropriations from the Legislature. The

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other part of of it is if Congress does reauthorize the act then it says the Department of Agriculture is required to prepare a budget request by the date that is 12 months after the date the...the act expires. So if say the act from the federal government went into effect in February and then one year later they ceased required the mandatory price reporting then 12 months later it would give this department 12 months to get the rules and regs in place and request the money that they would need. The provisions of the price reporting are effective on the first day of the calendar quarter that is 18 months after the expiration. So gives them 12 months to get started and within 18 months then they have to be enacting their mandatory price reporting in the state of Nebraska. Any questions that you might have?

SENATOR PREISTER: Thank you, Senator Kremer, for your opening. We have questions. Senator Wehrbein has one, I believe.

SENATOR WEHRBEIN: Just one question on where you finished up, provisions for price reporting, this is if Congress does reauthorize your (inaudible)...

SENATOR KREMER: The last one was if it does, yes, right.

SENATOR WEHRBEIN: The 18 months...

SENATOR KREMER: If it does reauthorize it, then we can be responsive anytime down the line that they would cease to require the mandatory price reporting. It would give us a timetable when our department has to do if it should...if it's five years later that they would cease to require the mandatory price reporting then it tells the timetable that our department has to kick in and do their work.

SENATOR WEHRBEIN: Well, it says 18 months after expiration.

SENATOR KREMER: That's when it has to take effect.

SENATOR WEHRBEIN: Expiration of what?

SENATOR KREMER: Of the...

SENATOR WEHRBEIN: Federal law?

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SENATOR KREMER: Yes. Of when the federal law ceases to require mandatory pricing then we have to something going within 18 months of that.

SENATOR WEHRBEIN: Wouldn't we want it sooner than that?

SENATOR KREMER: Well it gives them 12 months to...one thing is they have to come before the Appropriations of the Legislature to get some funding for it.

SENATOR WEHRBEIN: I see.

SENATOR KREMER: And that takes some time and get the personnel and rules and regulations has 12 months for that but then they have to start putting that to work and applying that within 18 months. I mean if that's too soon or I mean to late, we can always change that, too, if you want.

SENATOR WEHRBEIN: There could be an 18-month gap in reality then?

SENATOR KREMER: That could be.

SENATOR WEHRBEIN: Like we're in...

SENATOR KREMER: Right now, most of the packers are voluntarily reporting their prices, but that might be because they think it's going to come back and be "mandatorial" on the federal level. And if they would ever think that it was not going to be, they may cease. I don't know. But right now we're still having a pretty good response from voluntary.

SENATOR PREISTER: Thank you, Senator Wehrbein. Senator Fischer.

SENATOR FISCHER: Thank you, Senator Preister. Senator Kremer, did I understand you correctly and am I reading this correctly that Congress did extend the act for one additional year expiring on September 1, 2005? So it's already expired...

SENATOR KREMER: From that point on it must be.

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SENATOR FISCHER: ...from September 1, 2005. So does the 18 months start at that point now forward?

SENATOR KREMER: No. I don't know about that 2005 date cause I think they...

SENATOR FISCHER: Am I not reading that right?

SENATOR KREMER: ...they ceased the requirement here just in the last...somebody maybe could follow me. When did they cease the requirement of the price? September 30 is when they...

SENATOR FISCHER: September 30 of...

SENATOR KREMER: ...of this year, 2005.

SENATOR FISCHER: ...2005, so my question is then...

SENATOR KREMER: Okay.

SENATOR FISCHER: ...does the 30- or the 18-month time period start at September 30 that's referred to in this bill that Senator Wehrbein was talking about?

SENATOR KREMER: Okay. I would...I think it starts when we pass this legislation.

SENATOR FISCHER: Oh, 18 months...

SENATOR KREMER: Yep.

SENATOR FISCHER: ...from the enactment...effective date of the legislation.

SENATOR KREMER: We may need to do a little work on that...

SENATOR FISCHER: Okay. I was just curious with Senator Wehrbein's comment.

SENATOR KREMER: ...but the way it's written now really, our department ought to be requiring mandatory price reporting, but they have no funds. The funds all went back into the General Funds and they have nothing in place that is structured to do it. So that is kind of why we're starting

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up...maybe Rick could help us. When does...when would the 18 months start from, September 1 or when we enact the bill?

RICK LEONARD: The information, yeah. The bill was drafted...the current...did expire...I'm sorry I gave you the wrong dates, September 1, it should have been September 30 that it did...that the federal...it originally expired in October of 2004. Congress extended it for...

SENATOR KREMER: They extended it for another year.

RICK LEONARD: ...another year to expire on September 30. So it's not...the federal preemption has not been in effect since that point. The bill was written in a way that if we are anticipating Congress working on the bill now. We thought there was a good chance it would have reenacted it before this session.

SENATOR KREMER: Right.

RICK LEONARD: The bill says that if they don't their current work doesn't extend the existing law before 2000 first, then the Department of Ag has a duty to let us know what resources they need to implement that law. We give this to the legislative session to get those resources to them and then they have another six months or so to get going. What that second part is...the 12 and 18 months deals with if Congress were to reauthorize it by December 1, 2000...

SENATOR KREMER: And then cease.

RICK LEONARD: ...they're typically reauthorized for five-year authorizations. So that would apply to when that bill is first...if it were to be reauthorized by December, it will typically have a five-year expiration date. So this is...so to put the procedure...the same procedures in place were putting for this expiration are automatically in place in the future if it happens. (Laugh)

SENATOR KREMER: We've got a lot of dates flying around here...

SENATOR FISCHER: Yeah. So in fact maybe we can...

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SENATOR KREMER: ...and it's a little bit difficult...

SENATOR FISCHER: ...discuss the dates later...

SENATOR KREMER: ...oh, okay. Yeah.

SENATOR FISCHER: ...but my question is when does the 18 months start? But we can talk about that later.

RICK LEONARD: That only applies if Congress does reauthorize it, less time...

SENATOR FISCHER: Right. So it's from the time when the U. S. Congress.

RICK LEONARD: Right.

SENATOR FISCHER: Right.

SENATOR KREMER: If they reauthorize it and then...

SENATOR FISCHER: Senator Cunningham doesn't agree.

SENATOR KREMER: If they reauthorize it and then it ceases again that's when all this 12 months and 18 kicks in. If they do not reauthorize it, then the department needs...

SENATOR FISCHER: Right. Right.

SENATOR KREMER: ...to get busy right now whenever it's, I think it says practical, from that date and has to become into effect on October 1, 2007. So we're giving them, you know, pretty quick they have to have it ready to go by October 1, 2007.

SENATOR FISCHER: On October 1, 2007?

SENATOR KREMER: If the Congress does not reauthorize it.

SENATOR FISCHER: Correct.

SENATOR KREMER: So that would give us next legislative session...

SENATOR FISCHER: I guess it's just that...

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SENATOR KREMER: ...is that correct to...

SENATOR FISCHER: Okay.

SENATOR KREMER: ...request the money that they need to get everything else in place? We maybe need to change some dates if you feel like it needs to, but that's...I think.

SENATOR FISCHER: Thank you.

SENATOR KREMER: Your welcome.

SENATOR FISCHER: Yeah, we'll look at them a little more.

SENATOR KREMER: Okay.

SENATOR FISCHER: Thank you.

SENATOR PREISTER: Thank you, Senator Fischer, and thank you, committee counsel, Rick Leonard. Senator...any other questions? Seeing none, thank you, Senator Kremer. At this point we will take testimony from any proponents. Anyone wishing to support the bill, please come forward. There are the on-deck chairs for the next testifiers, and please introduce yourself, spell your name, and begin.

GREG BAXTER: Good afternoon, Chairman Kremer, the rest of the Ag Committee. My name is Greg Baxter, G-r-e-g B-a-x-t-e-r. I'm from Grand Island. I'm here to testify in regards to LB 916 on behalf of the Nebraska Cattlemen. The Nebraska Cattlemen have had the privilege and greatly appreciate the opportunity to have participated in helping to frame the language in this particular bill. I, personally, am speaking as a third generation cattle feeder here in the Grand Island area. We have cow-calf operations as well as confined feeding operation. From my perspective growing up, and I have a slight hunch that Chairman Kremer may have had the opportunity to appreciate it and Senator Wehrbein probably has as well, growing up analyzing a lot of ticker tape type, teller type information from the markets as they were gathered years and years ago. This information is critically important to our industry, from a producer's perspective, critically important to this industry from the standpoint that it helps us to analyze not only the current

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market but to refer back to and try to spot some trends in our markets. Trends from the standpoint of what's your boxed price on beef is going for so we know what the market is. Helps us to reflect on not only the past but to project and plan for the future how to operate our businesses. This program would be critically important for the continuing ability to budget and to plan ahead to operate our businesses. We have had the pleasure of having some growing pains, and it has been a pleasure at times, and at times it has been a frustration for the mandatory program as the federal government implemented it. That being said, I think it would be safe to assume that we have had the opportunity to learn from the errors, from some of the errors, in the federal program and have an opportunity to grow from those with our own state-based program. The language in this particular bill is specifically addressing the creation of a state-based mandatory program. Now the statement was made earlier in the introduction and I think it is very safe to say that in our industry it is a highly competitive industry today. The beef industry and the cattle industry in Nebraska is arguably the largest revenue creating industry this state has. And this bill would allow in this highly competitive environment for producers to still have access to that information, that is, as I said earlier, critically important for us to be able to project into the future and plan for our businesses into the future. Now I would certainly hope, it's anybody's guess, but I would certainly hope that the federal program would be reinstated so that we could continue on with any...with as few disruptions as possible. But with that being said, we don't know that it will be. This is very similar to how the Nebraska Cattlemen addressed and how the state of Nebraska addressed the issue with the check-off program when it was being challenged in the U.S. Supreme Court from constitutionality, we stepped forward as an industry, saw the need and the benefits of such a program, and we developed the appropriate bills here in Nebraska that in case the Supreme Court would have ruled that existing program unconstitutional, that we had a program as a backup in place to pick up where it left off so that we did not lose out on the critical opportunities for research and promotion of our product. For the state of Nebraska, this is very, very important. I feel this bill is very similar in that we are trying to prevent or minimize as much as possible any delays in such a program as it would pertain to the benefits to the producers in the state of

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Nebraska. I would be happy to answer any questions any of you would have, but otherwise, I appreciate the opportunity to come before you today.

SENATOR PREISTER: Thank you, Mr. Baxter. Are there questions for Greg from any of the committee members? Seeing none, we thank you for testimony.

GREG BAXTER: Thank you.

ROD JOHNSON: (Exhibit 10) Chairman Preister and committee members, my name is Rod Johnson and I'm the executive director of the Nebraska Pork Producers Association here representing the producers across the state. The hog market has changed considerably over the last few years and currently only about 2 percent of the marketings are through the terminal markets, and an increasing number of animals are sold on contractual arrangements. With this in mind, the producers felt very strongly that the mandatory price reporting was an important program for them to gain market transparency and market price discovery as they were developing marketing plans for their program. Our leadership has felt very strongly that the national program is probably the best program that we could have at this point but unfortunately as was mentioned here earlier it expired last September. Over the last couple of years, several times through the process, we have had representatives from our association in D.C. working with the congressional delegation there, working with our national organization pushing to increase or renew the program for the five-year extension, and also worked on some enhancements to the program which we felt were very important to the pork industry. And so that particular procedure actually went through the House and was accepted in the House program, but then unfortunately, it did not get enacted as far as an extension of the program. So with that in mind, we appreciate the work that Senator Kremer and Rick have done in pulling the department together, all the other industry shareholders together to work on the wording that has been put into LB 916 here. In the event that the national program is not available, why we recognize that the Department of Ag will have to implement the program, and have to have the resources to do that, and we feel that what has been put together in LB 916 will accomplish that, and so we urge you to advance LB 916 on that basis. Glad to answer

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any questions.

SENATOR PREISTER: Thank you, Mr. Johnson. Are there questions for Rod from any committee members? Seeing none, we thank you for appearing before us today. Next testifier in support?

JAY REMPE: Senator Preister, members of the committee, my name is Jay Rempe, that's R-e-m-p-e. I'm state director of governmental relations for Nebraska Farm Bureau Federation, here today in support of LB 916 on behalf of Nebraska Farm Bureau. Basically, I guess I'll just reiterate what the previous two testifiers have said. Price transparency is very important to the members of our organization, and ideally, we'd like to see that...this program at the federal level. But if we can't get that done, we think it's important to enact the state level. I appreciate Senator Kremer's and Rick's work and inviting us in to talk about this. I think just a little discussion on the time issue that was brought up earlier. I think what we were trying to do and part of the discussion was balance. Ideally, we would like to see something done at the federal level. But if that can't be done, we want to allow enough time to try to get that accomplished, but if you can't then we have to worry about enacting the state law. This would give the Department of Ag the time needed to come up to, develop the program, develop the rules and regs, come back to the Legislature, request the funding. And then I think it also gives the Legislature another opportunity to weigh in on the issue, if it so speaks, if at that time they want to continue with the policy which we hope they would. But it would give them another opportunity to do that. And then, I think on the flip side though, you don't want the Department of Agriculture needlessly expending the time, and the resources, and the funds to develop a program when it's going to be reenacted at the federal level. So it is kind of a balancing act. I don't know if the timing is right in the bill, but it is certainly something we could support. And if some changes need to be made at the time, in which we would be willing to work with anybody, so...so appreciate the opportunity to testify and I'd be happy to answer any questions.

SENATOR PREISTER: Than you, Mr. Rempe. Are there questions for Jay? Senator Kremer.

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SENATOR KREMER: I'll ask you this question, maybe I think, is the the department going to testify then later? No. Okay, I was going to ask them to come up as neutral. We've got the time line if they fail to reauthorize.

JAY REMPE: Um-hum.

SENATOR KREMER: Which kind of has to be operative by October 1, 2007, but if they have not reauthorized by December 1, 2006 so that's a shorter time period than what the time period is if they do authorize and then quit, because that's 18 months in there in that time am I...

JAY REMPE: Yeah, well...

SENATOR KREMER: If they do not reauthorize it by December 1...

JAY REMPE: Um-hum.

SENATOR KREMER: ...then the department has to go to work and try to find the funds, and the personnel, and the software and everything to be operative by October 1, 2007...

JAY REMPE: Um-hum.

SENATOR KREMER: ...so we've got less than a year there. Is that a long enough time do you think? I'd need to probably ask the department that but then maybe is the 18 months too long if they would reauthorize it and then cease to authorize the mandatory...

JAY REMPE: Yeah.

SENATOR KREMER: ...on the federal level. Then we have 12 plus another 6 in there, so...

JAY REMPE: Part of it...from our standpoint, part of the thinking from the shorter time frame up front for right now is because the act has expired.

SENATOR KREMER: And we have to really hurry up to get something going.

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JAY REMPE: And it...I think it'll be...it's been since September 30, by the time we get to December 1 that will be over a year, and then by the time we get to October, you're looking at over a year...over 18 months. And so from our standpoint, we'd like to see...we're comfortable with that time period. I won't speak for the Department of Ag on whether they think they can get geared up and get something into the Legislature for an appropriation. But I would anticipate that as we go through the summer and the fall if nothing changes at the federal level, the Department of Ag will start working on this and probably will have something ready around that date. And then I think the 18 months on the other side of it, if Congress does reenact it and then at some subsequent time period it expires, I think the 18 months is somewhat of a juggling act but I think it is about right because you never know when that time period might be. That would at least give you enough...the department opportunity to come in and request the funding and the Legislature another chance to address on it. So I think the 18 months assures that.

SENATOR KREMER: Okay. And we said if they failed to reauthorize by December 1 so we're kind of...it doesn't make sense for the department to start working now so...

JAY REMPE: Um-hum.

SENATOR KREMER: ...there's going to be a gap in here...

JAY REMPE: Um-hum.

SENATOR KREMER: ...but you kind of want to make sure you give opportunity for the federal government to reenact it before we start working on it.

JAY REMPE: Yeah. And from the communications we've received, there is...they are working on it at the federal level. There's some difference of opinion but we're hoping they can work through that and get something done yet this year, so.

SENATOR KREMER: And hopefully, we can have a voluntary reporting in the meantime, so.

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JAY REMPE: Right. Yeah, we want to encourage that.

SENATOR KREMER: Thank you.

SENATOR PREISTER: Thank you, Senator Kremer. I would just ask one and you may not have the information but since you've worked legislatively at both levels. The fiscal note says there is no fiscal cost to the state currently until such time as they may have to do that. Any estimate of what we might have to appropriate or what might be a cost? That might be better directed to the agency.

JAY REMPE: Boy. Yeah. I don't have any idea, Senator. I'm trying...and I'm racking...I'm trying to test my memory here when the bill originally passed at the state level what the funding level was then but I can't recall what that was either, so...

SENATOR KREMER: It was \$54,000.

JAY REMPE: \$54,000. Okay.

SENATOR KREMER: That was appropriated to them and Senator Wehrbein may remember that. He...

JAY REMPE: Okay.

SENATOR KREMER: That...when we were preempted then that money was laying there and it went back into the General Fund.

JAY REMPE: Um-hum. Okay.

SENATOR PREISTER: Thank you, Senator Kremer. Thank you, Jay. Next proponent?

JOHN HANSEN: Senator Preister, members of the Agriculture Committee, for the record, my name is John K. Hansen, H-a-n-s-e-n. I am the president of the Nebraska Farmers Union. I appear before you today in strong and enthusiastic support as opposed to the wishy-washy support that I've had on other bills in favor of LB 916. This was the culmination of four bills on market reform that came out of the 1998 hog price collapse debacle in efforts at the state level to move forward with market reform with LB 932, LB 933, LB 934, and

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LB 935. And as a result of the efforts of that period of time, the efforts for market reform that came out of Nebraska really forced the issue at the national level along with two or three other Midwestern states passing similar market reporting provisions which then forced the packers to basically come to the table at the national level and say well, if we're going to have market reporting provisions then we'd rather have uniform market reporting provisions across the country rather than have this patchwork of different statewide kinds of approaches. And so that was really a tremendous contribution that Nebraska made to helping develop market reporting at the national level. And I'm also in support and in agreement with the comments made before me today from the various ag and commodity organizations. But would just add a couple of things that maybe are bit more explanation of kind of what is going on at the national level and why I think that this particular bill at this point in time is so very important to move forward. That part of the reluctance on the part of Congress to reenact the five year extension was unhappiness over some of the provisions and some of the shortfalls in the current national market reporting provisions. So while everyone for the most part agreed that it ought to get reenacted and extended, there was an honest difference of opinion over whether you just do what was already on the books and extend that or whether you wait for the GAO investigation into that and see what they came up with. And so the GAO investigation took longer than they thought and so then they were up against the deadline. Things didn't get renewed. But in the late fall of 2005 there were...the report did come out not that long ago. And so there were some very constructive suggestions in that in order to make the national market reporting provisions better, more consistent, more uniform, more timely, more appropriate. And so some of...a lot of organizations were also making contributions as we did, both the state and national level, to what we thought was the shopping list of things that could and should be done to update the market reporting provisions at the national level. And I say all this because what we have here at the state level is really the backup. It's the backup for when the fed is not operating but it's also at the same time the impetus to make sure that the feds actually do reauthorize the national bill. So from that standpoint I really congratulate Chairman Kremer and Rick Leonard and everyone who's been involved in this effort

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to try to get this reauthorized. And I think it's a very important thing that the Ag Committee do everything it can to author...whether you prioritize this or however it goes forward. But it does need to get on the agenda and does need to go forward because the political reality in Washington is because of the size of the meat industry in Nebraska since this played such a strong role in forcing the issue last time. If Nebraska shows no interest in reauthorizing this, then that can be taken as a sign that, well, the support for market reporting has gone away. So it's important to send the political signal to Congress to go forward with the updates and Senators Harkin and Grassley are working on that from Iowa. So my thought is to try to get this through as fast as possible. Send that positive message with as little fanfare as possible for an overhaul of what we have here. But on down the road if this is the backup, I think it would behoove the Ag Committee on down the road to take a more comprehensive look at what it is the feds did in order to update the market reporting at the national level, to see what good could be gained there, and what insight we could find. So if ours is the backup, then our backup is more consistent with the feds and better and more effective, and hopefully more similar to perhaps what hopefully gets reauthorized for the next five years when Congress...when Grassley and Harkin are finally able to get things moved forward. So there are some updates on improvements but I think now is not the time to open all of that up. I think now is the time to just reauthorize it, send a good strong positive signal, and move forward. And I thank again the Committee Chair, and Rick, and encourage you to give this committee's positive endorsement and vote it out onto the floor as soon as possible. Any questions?

SENATOR PREISTER: Thank you, Mr. Hansen, and we appreciate you not being so wishy-washy and being firm this time.
(Laugh)

JOHN HANSEN: Well, I felt kind of bad about some of the wishy-washyness with some of the support that I've had in previous bills.

SENATOR PREISTER: I could see the guilt just in your face. Are there questions from committee members of John? Seeing none, thank you for appearing before us today.

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JOHN HANSEN: Thank you.

SENATOR PREISTER: Next proponent?

RICH LOMBARDI: (Exhibit 11) Good afternoon, members of the committee. My name is Rich Lombardi. I am appearing on behalf of the Center for Rural Affairs. We have some comments we would like to enter in the record for support of bill. Want to thank Senator Fischer, Senator Wehrbein, Senator Kremer, Senator Baker for introducing this bill. We, too, would probably share the concerns that I think I've heard the committee and others have with regard to the gap. If there was a lot of faith that the federal government was going to act positively in this area, we probably wouldn't have a bill such as this. Therefore, it would seem to me that you're really talking about an appropriations which it seems to me you really have a September 15 deadline in preparing for the biennium budget and you might want to think about that timetable in developing an appropriations process for the state to handle doing this. Obviously, your staff is much more familiar with the various federal deadlines. But I was thinking of the...ultimately this is go it your lone...alone state regulation. And clearly there is no...I don't think that for the amount of money that you're talking about and the incredible importance of this regulatory function that you really want to leave it to any chance. And I think you have pretty universal support to be doing this but you might want to fit into the biennium budget process so that all cash flows. So that's our suggestion. Thank you again for introducing the bill.

SENATOR PREISTER: Thank you, Mr. Lombardi. Are there questions of Rich from any of the committee members? Seeing none...

RICH LOMBARDI: Thank you.

SENATOR PREISTER: ...thank you for appearing before us today. Any additional supporters of the bill? Seeing no one else coming forward are there any opponents to the bill? Any opponents to LB 916? Seeing none, is there anyone neutral who would appear? Seeing none, Senator Kremer if you would like to exercise your right to a closing, please do so.

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SENATOR KREMER: Boy, I like this no opponents. That...I don't know how to act really.

SENATOR PREISTER: It is refreshing.

SENATOR KREMER: It is, isn't it? So I...just a couple of comments and I think was mentioned to you about a backup. But I think how important a backup is that for if they should reauthorize...or should fail to reauthorize at the federal level when the packers know that there is a backup they're more apt to continue with the voluntary price reporting than if we had nothing in the statute. And it really basically what it does is how we react if they do reauthorize it and how they act if they do not reauthorize it. I know there is a little bit difference in the timetable there, but you need some time in order to get through the appropriations process to get the money that they...the department needs. So want to thank all those that have come and testify and for you for listening to the bill.

SENATOR PREISTER: Thank you, Senator Kremer. And that will conclude the hearing on LB 916. It's also the last bill of the day. We'll conclude our hearings. We thank you all for appearing before us today and for your part in our legislative process. I will now turn the meeting over to Senator Kremer.

SENATOR KREMER: Okay. Thank you. Let's go into exec session.